**Summary of comments on CEIOPS-CP-36/09** CEIOPS-SEC-71/09

**Consultation Paper on the Draft Advice on Special Purpose Vehicles**

CEIOPS would like to thank **ABI**, **AVIVA, CEA, CRO Forum, Deloitte, ESF, FFSA, GDV, Ireland Solvency 2 Group*, IUA, KMPG ELLP, Legal and General Group, Lloyds, Munich Re, Pearl Group Limited, PricewaterhouseCoopers LLP UK , Solvency II Legal Group**,**

**Swiss Re** has not responded individually but has contributed to the comments of CEA, CRO Forum and ESF.

* Ireland's Solvency 2 Group, excluding representatives from the Department of Finance and the Financial Regulator. The Solvency 2 Group is a high-level group set up by the Irish government for the purpose of contributing to the development of Solvency 2 from an Irish perspective. It is made up of representatives from the insurance industry (life and non-life, direct writers and reinsurers), industry representative bodies, professionals (actuaries, accountants and solicitors) working with insurers, as well as representatives from the Department of Finance and the Financial Regulator. As noted above, the latter two representatives have not contributed to this submission.)

** Solvency II Legal Group: Allen & Overy LLP; Clifford Chance LLP; Clyde & Co; Dewey LeBeouf LLP; Edwards Angell Palmer & Dodge UK LLP; Freshfields Bruckhaus Deringer LLP; Herbert Smith LLP; Linklaters LLP; Lovells LLP; Norton Rose LLP; Slaughter and May; Simmons & Simmons and Robert Purves, 3 Verulam Buildings (Barrister). (The UK Financial Services Authority is an observer at meetings of the group.)

The numbering of the paragraphs refers to Consultation Paper No. 36 (CEIOPS-CP-36/09).

| No. | Name | Reference | Comment | Resolution |
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| 1. | ABI | General comment | We agree with the overall approach to the regulation of Insurance Special Purpose Vehicles (ISPVs) as set out in the consultation paper. It is important that the regulation of these entities is proportionate and recognises the limited regulatory risk these vehicles represent. The Level 2 requirements must also allow for regulatory judgement where appropriate (for example in determining the effectiveness of risk transfer) and must be sufficiently flexible to enable further market developments in this area. | Noted |

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| | | | We note that the consultation proposals are limited to ISPVs. We agree with the comment in paragraph 3.4 that other SPVs may be considered for regulatory capital relief where these provide risk mitigation.<br><br>As envisioned in the fourth bullet point of paragraph 1.5, CEIOPS should also recognise that a number of ISPVs have been set up under the existing requirements of the Reinsurance Directive. The arrangements governing these entities should be grandfathered into the proposed Solvency II regime and such entities should not require re-authorisation while the ISPV continues to carry out activities provided for under its initial authorisation. | Existing SPVs will be grandfathered but supervisors will expect SPVs set up before 31 October 2012 to have regard to the future Solvency 2 requirements. |
| 2. | AVIVA | General comment | Aviva supports the introduction of the special purpose vehicle provisions as outlined in CP36, and would like to make the following comments.<br><br>The framework outlined within the paper appears reasonable, and allows flexibility for future development of the SPV concept. Aviva believes that this element of flexibility is crucial to the success of the SPV concept, and that the regime is able to adapt to future events and developments. It is therefore right that local regulators are able to apply the rules in an appropriate manner for the particular SPV's circumstances.<br><br>Although the paper discusses cross border SPVs at a high level, it is not clear at present how for example, how the regime would work where a number of Group EEA (or external to the EEA) businesses wish to feed into one SPV, particularly with regard to the solvency credit given by each local regulator. Aviva would see such cross border SPVs as being potentially valuable, both in terms of managing, for example, Group level catastrophe type risks, and that with a wider mix of risks, they would also be potentially more attractive to external investors. | Noted.<br><br>CEIOPS has discussed this and added some clarification in the paper.<br><br>If the SPV is external to the EEA then it would be out of the scope of CP36.<br><br>In relation to the solvency credit |

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| | | | | given to each entity that should be covered by Level 2 implementing measures or Level 3 guidance relating to Article 109 (e). |
| 3. | CEA | Introductory remarks | The CEA welcomes the opportunity to comment on the Consultation Paper (CP) No. 36 on "SPVs".<br><br>It should be noted that the comments in this document should be considered in the context of other publications by the CEA. 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.<br><br>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. | Noted |
| 4. | CEA | Key comments | The CEA welcomes the consultation paper as it provides a good starting point in defining a reliable framework for the establishment of SPVs under the Solvency II Directive.<br><br>The CEA agrees with the conclusion under paragraph 3.81: "An SPV should be fully funded at all times and is not therefore required to calculate an individual MCR or an SCR."<br><br>The regulatory requirements should aim at fostering adequate risk assessment and management and should not needlessly complicate the establishment of SPV. **As in the banking sector, we believe it is more efficient to regulate the sponsor's treatment of the risk transfer**, i.e. benefits gained, rather than regulate the 'form' of the instruments or the vehicles used to realise the risk transfer. Whether an entity is or is not a SPV should not determine whether it is a regulated entity or not. The principle of economic basis over legal | Noted.<br><br>Noted<br><br>Article 209 of the Level 1 text only covers SPVs. However, CEIOPS agrees that the principle of the substance of a transaction is more important than the form of a transaction. This principle was taken into consideration when |

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| | | | form should be applied in the context of SPVs.<br><br>**The very extensive documentation requirements** set forth in section 3.50 (the two sets of reporting– financial statements and Solvency II valuation) **are disproportionally burdensome.**<br><br>In various sections of the consultation paper, **the decision or approval of the supervisor is subject to a material degree of judgement**. While **we recognize that judgment is needed we would like to re-stress the need to ensure consistent results of the decision making process across member states for similar situations.**<br><br>We also understand though that the legal form of SPV could have a certain impact on the effectiveness of the risk transfer into such entities. Below we make few points on such legal realities and the challenges they might rise. | defining the SPVs that should be covered under CP36. The scope of the paper has been clarified.<br><br>CEIOPS has reviewed the documentation requirements. The supervisory authority must have enough information while authorising SPV's since authorised SPV's get full automatic recognition as a mitigation technique.<br><br>Noted. In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. |
| 5. | CRO Forum | General comment | The CRO Forum fully supports CEA's response to CP 36. | Noted |
| 6. | Deloitte | General comment | We are supportive of the advice that CEIOPS has put forward, and have no further comments or observations in respect of this paper. | Noted |
| 7. | ESF | General comments | The regulatory requirements should be aimed at fostering an adequate risk assessment, and should not complicate the establishment of SPVs. As in the banking sector, we believe it is more efficient to regulate the sponsor's treatment of the risk transfer (i.e., benefits taken), rather than regulate the "form" of the instruments or the vehicles used to realise the risk transfer. Whether an entity is or is not a SPV should not determine whether it is a regulated entity, however we support the high-level requirements for the establishment of a SPV within the scope of article 209 (i.e., those which assume insurance risk from a re-insurance undertaking). | See (comment) 4. |

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| | | | Furthermore the principles of economic substance over legal form should be applied in all respects. | |
| | | | The ESF believes that it would be more appropriate to comment on non insurance SPVs outside of this CP, other than perhaps to reaffirm generally that all forms of risk transfer techniques can generate solvency benefits for an undertaking to the extent the risk transfer can be demonstrated to be effective. | Non insurance SPVs will be covered by other material from CEIOPS. This has been clarified in the paper. |
| | | | As the scope of this CP should only apply to insurance arrangements, and not to parametric/modelled loss arrangements which most often are derivatives and therefore do not need insurance SPV to be realised. Thus all references to the latter type of arrangements should be removed from the CP to avoid any confusion going forward. | CEIOPS agrees that the principle of the substance of a transaction is more important than the form of a transaction. CEIOPS has clarified the scope of the paper in light of feedback. |
| | | | In various sections of the CP, the decision or approval of the supervisor is subject to a high degree of judgement, due to the fact that some information has not been detailed (e.g. definition of risk transfer) or clearly defined (e.g. level of information the supervisor can ask in addition to the minimum required). We recognise that this judgmental aspect of the approval does not ensure harmonisation across Member States; however we recognise that if the regulatory framework is to be proportionate, judgment is essential in assessing different types of transaction. | Noted. In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. The requirements in the paper go a long way towards harmonisation of practices across Europe. |
| | | | We believe it would be inappropriate to attempt to clearly define the regulators' roles other than by stating the basic principles that:<br>1) the undertaking's regulator is responsible for assessing the effectiveness of the risk transfer and ensuring the benefits taken by the undertaking do not exceed the effectiveness of the risk transfer; | Noted |

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| | | | 2) the SPV's regulator is responsible for the initial authorisation of the SPV, including that the SPV is fully funded with respect to benefits being taken by the undertaking, and for monitoring that the SPV is not insolvent over the course of the transaction.<br><br>Finally, the extensive documentation requirements set forth in section 3.50 (the two sets of reporting– financial statements and Solvency II valuation) are considered very burdensome. | CEIOPS has reviewed the documentation requirements |
| 8. | GDV | General comment | **The GDV welcomes the opportunity to comment on CEIOPS' consultation paper CP-36-09. Moreover, in general the GDV supports the comments given by the CEA.**<br><br>Insurance-linked securities provide an important mechanism for the transfer of insurance risks to capital markets, and may provide an additional layer of protection to traditional insurance and reinsurance arrangements or serve to reduce reliance on these arrangements. Therefore, we basically welcome the consultation paper since it provides a reliable framework for the establishment of SPV's under the Solvency II-Directive. The special significance of SPV's justifies filing for explicit Pillar II-requirements. However, these regulatory requirements should primarily serve an adequate risk assessment and management and should not needlessly complicate the establishment of SPV's. Given this background particularly the exhaustive documentation requirements set forth in section 3.50 seem to raise an inappropriate administration burden. | Noted.<br><br>CEIOPS has reviewed the documentation requirements |
| 9. | FFSA | general | In various sections of the consultation paper, the decision or approval of the supervisor is subject to a high degree of judgement, due to the fact that some information has not been enough detailed (e.g. definition of risk transfer, meaning of insurance risk cf hereafter | See 7 |

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| | | | comments on §3.10) or clearly defined (e.g. level of information the supervisor can ask in addition to the minimum required). We consider that this judgmental aspect of the approval does not encourage the application of the principles of harmonisation and homogeneous treatment over the countries; thus, the level of supervisory could be more clearly defined in specific areas, that we specify hereafter. | |
| 10. | FFSA | general | The CP does not provide any details on the legal status of a SPV. For instance, in France, a SPV has no legal personality. This possibility shall be mentioned in the CP.<br>As such, governance and procedures are minimum in this vehicle which operates under "autoplilot" mechanism (i.e. not as an operating company), and the relating required level in the CP should be adapted.<br>This would also lead to distinguish the area of approval of the vehicle for which the supervisor of the SPV would be in charge (management function, fully funded principle…) and the area of approval of the risk transfer assessment for which the undertaking regulator should be in charge. This issue is addressed below ("relationship between SPV and undertaking supervisors") and in various sections of the analysis. | Please see the Level 1 text - recital 13(22) says they need to be an undertaking and can not be an "autoplilot" mechanism.<br>Authorised SPVs should be granted full recognition as a risk mitigation tool.<br>The cooperation between supervisory authorities has been clarified. |
| 11. | FFSA | General comments on 3.46 | Under this consultation paper, we understand that the authorization of establishment of the SPV by the supervisory authority is planned and determined after that all documentation has been submitted. The process of creation of a SPV is time-consuming and can lead to significant expenses (legal, banks…).<br>In order to be more efficient, we propose to introduce in the process:<br>• a pre-approval form from the authority, including a minimum required level of documentation to get a first feedback. This would lead to a non-binding position, that would allow the undertakings to clearly understand what the expectations are. | CEIOPS does not agree with the introduction of a formal pre-approval process. However CEIOPS would normally expect issues to be discussed as part of on-going dialogue between supervisors and supervised entities before a formal approval is presented.<br>The timings of the approval process |

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| | | | • a timeline for the supervisor to pre-approve or approve the SPV establishment. For example, once the pre-approval or approval required documentation is provided, the supervisor could have a 1-month period to give its opinion on the operation, following a given form which would be homogeneous over the countries. | should be developed under Level 3 but CEIOPS believes that it should not be longer than the timing to approve an insurance or reinsurance undertaking. |
| 12. | FFSA | General comments on<br>3.17<br>3.20 | The §3.17 (and §3.20) describes the different additional requirements when an SPV is not located in the same EEA jurisdiction than the undertaking which transfers the risk. The supervisory authority where the SPV is established seems to be very dependent on the supervisory authority of the undertaking: it has to consult, to take into account its views and to keep it informed of the result of the authorization process.<br><br>There are 2 key elements in the CP36 which are sometimes mixed together : A/ the authorisation of the SPV as a reinsurance vehicle; and B/ the regulatory benefits granted by the supervisory authority of the undertaking for the risk transfer to the SPV.<br><br>This could lead to confusion as to the respective roles of supervisory authorities leading to execution delays and an unharmonised outcome depending on the country of the undertaking.<br><br>We propose two possibilities:<br><br>a. distinguish on the one side the approval of the vehicle (fully funded principle, reporting requirements…) for which the supervisor of the SPV would be in charge and on the other side the reinsurance treatment (assessment of risk transfer etc…) for which the undertaking regulator would be in charge;<br><br>b. Passporting of regulatory approval by the regulator of the SPV consisting in aligning the authorization of the undertaking supervisory on the supervisory authority where the SPV is established. | CEIOPS has clarified that the authorised SPVs are automatically granted a full recognition as a risk mitigation technique. CEIOPS has also clarified the importance of cooperation between supervisory authorities. |

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| | | | We recommend the application of the first proposition which seems to be more consistent with the status of the SPV. This will imply to flag in the documentations required the one to be agreed by the supervisor of the home country of the SPV and the one to be agreed by the undertaking supervisor. | |
| 13. | Ireland 2 Solvency Group | General comment | Ireland has established itself as one of the leading domiciles for securitisation companies in the EU. This results partly from the specific tax regime for securitisation companies that was put in place in Ireland under the Taxes Consolidation Act 1997 (similar to the regimes that apply to such companies in the Netherlands and Luxembourg). In the case of insurance-linked securitisations, a number of other factors contribute to the establishment of securitisation companies in Ireland, including the willingness of the Irish Financial Regulator to invest the necessary resources in the area and the availability of skilled professional advisors and of service providers familiar with insurance/reinsurance prudential supervisory requirements (through the presence in Ireland of a substantial captive insurance industry).<br><br>Securitisation companies themselves do not typically engage employees directly, but through the service providers and professional advisors involved in their establishment they are responsible for creating and maintaining employment and generating tax revenue. Further, the technique of securitisation is a valuable means of spreading and mitigating risk between undertakings and also of accessing fresh capital – for example, for life assurers a securitisation of their embedded value constitutes a valuable option for raising fresh capital. Although securitisations where regulated financial service providers are the originators must be undertaken subject to proper supervision and risk controls, the technique must remain available for such providers. It would put the insurance and reinsurance industries at a potential disadvantage to other providers | Noted. |

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| | | | – for example, in the banking industry – if securitisation became significantly more difficult for them to utilise as a capital raising and risk mitigation tool when compared with those other providers. It is against this background, we believe, that the proposals in CP 36 must be considered. | |
| 14. | IUA | General | We note that this paper largely deals with the regulation of SPVs based in the European Union. Clarification of the treatment of non-EEA based SPVs would be useful, particularly with regards to any read across of the eight general principles and/or equivalent regimes. | Other Papers from CEIOPS will deal with the relief in capital requirements in relation to non-EEA based SPV's. |
| 15. | IUA | General | Although we recognise that some degree of supervisory judgement is necessary, we believe that where supervisory judgements are permitted, it will be important to ensure harmonisation and consistency between these judgements throughout the Community in order to preserve a level playing field. Such judgements should also be proportionate to the complexity of the SPV in question. | Noted<br>In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. The requirements in this paper provide a high degree of harmonisation. |
| 16. | IUA | General | We suggest that it might be helpful to have a timetable for authorisation for SPVs in place, and for supervisors to consider the need for the various discretionary judgements they may make. For example whether the supervisor considers that they need "[An]other document deemed necessary"(Para 3.50), or "Any separate regulatory reporting requirements on the SPV"(Para 3.75). We also believe that an established timeframe for any supervisory approvals (such as for reuse of the SPV or reinsuring additional risks into the SPV) | See 11. |
| 17. | KMPG | General comment | We support the general themes in the Consultation Paper. In particular, we agree that the principles required of a contract between insurer and SPV should be broadly consistent with those | Noted |

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| | | | required of a (re)insurance undertaking (especially in relation to risk transfer, governance (with proportionately applied for the SPV regime) and prudent person investment principles). We support the principle that insurance liabilities must rank above those of, for instance, bond-holders which reaffirms policyholder protection. | |
| 18. | L&G | General | We feel that the Consultation Paper focuses on a definition of SPVs which is too narrow and as a result excludes a range of options that the Level 1 directive allowed. For example, the paper restricts SPVs to only take "insurance risks" and would therefore exclude the SPVs that have been set up in recent years under the UK's Insurance Special Purpose Vehicles regime. We would encourage CEIOPS to broaden the range of vehicles permitted under the proposals in order to make it consistent with the Level 1 directive. | Noted. CEIOPS agrees that the principle of the substance of a transaction is more important than the form of a transaction and this has been clarified but has to remain in line with Article 209. |
| | | | There are also a number of measures included which we suspect are included due to the recent economic events that have damaged the credibility of banking style securitisation vehicles. While it is indeed desirable to avoid these risks, there are significant differences between the vehicles used in connection with insurance companies and those used in a more general environment. SPVs used by insurers are based on reinsurance contracts where the liability effectively falls back on the ceding company in the event of failure of the SPV. As a result, we feel that it is more appropriate to focus the supervision on the ceding company. | All principles and measures included in the Paper have the goal of giving the supervisory authority a level of comfort as for the effectiveness and efficiency of the SPV as a risk mitigation technique. |
| | | | We are pleased to see the intention to allow existing SPVs to remain outside of the Solvency II regime. However, we are keen that the mechanisms used to do this are amended so that existing SPVs are not brought into scope as a result of sensible management actions that might be taken in the normal course of business, such as injecting new capital into the SPV. | Current SPVs have been giving a grandfathering clause. Paragraph 3.16 of CP36 clarifies that only when the SPV commence any new activity a supervisory approval would be necessary. |
| | | | We believe that the emphasis in the SPV advice to the commission | The emphasis of CP36 is the |

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| | | | should focus on the extent to which credit can be taken for SPVs rather than imposing additional regulations on SPVs allowing the insurance industry to continue to benefit from the risk management innovation that SPVs provide. | approval of SPVs, as required under article 209 of the Directive. Other issues on risk mitigation techniques will be covered by other CPs from CEIOPS. |
| 19. | Lloyds | general | Lloyd's welcomes the opportunity to comment on this paper.<br>We consider that this paper appropriately addresses issues in relation to special purpose vehicles (SPVs). There are occasions (dealt with in detail below) where we consider that minor amendments to the text could be made to aid precision, clarity and consistency. | Noted |
| 20. | Munich Re | General | Munich Re appreciates CEIOPS approach on Level 2 implementing measures and being given the opportunity to comment on the SPV regulation. SPVs are an integral part of modern risk mitigation techniques and shall be appropriately regulated. Regulations on the SPV shall be adapted to the cedent's regulatory framework and shall not introduce immoderate administrative hurdles or prevent economically efficient and legally tried and tested structures such as programme or multi-issuance vehicles. | Noted |
| 21. | Pearl | General | We agree with the overall approach to the regulation of Insurance Special Purpose Vehicles (ISPVs) as set out in the consultation paper. It is important that the regulation of these entities is proportionate and recognises the limited regulatory risk these vehicles represent. | Noted |
| 22. | Solvency II Legal Group | General | This response reflects the views of the following law firms, which all have clients in the UK and wider European (re)insurance sector and have formed an open group to discuss legal issues raised by the Solvency II Framework Directive:<br>Allen & Overy LLP; Clifford Chance LLP; Clyde & Co; Dewey LeBeouf LLP; Edwards Angell Palmer & Dodge UK LLP; | Noted |

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| | | | Freshfields Bruckhaus Deringer LLP; Herbert Smith LLP; Linklaters LLP; Lovells LLP; Norton Rose LLP; Slaughter and May; Simmons & Simmons and Robert Purves, 3 Verulam Buildings (Barrister). (The UK Financial Services Authority is an observer at meetings of the group.)<br><br>As a general comment on CP36, we believe that aspects of CEIOPS's draft advice reflect concerns about securitisation structures involving the use of special purpose vehicles (SPVs) in the banking sector. However, an analysis of the use of SPVs and the structure of transactions in the insurance sector demonstrates that the same concerns do not necessarily arise. For example, a banking transaction usually involves a full sale of assets held by the bank to an SPV and the bank retains no interest in those assets (or in risks associated with those assets) after the sale. By contrast, transactions in the insurance sector involve the reinsurance of risk into an SPV but do not relieve the insurer of ultimate liability under the contracts that are the subject of the reinsurance. Because of this, we question the need to carry over banking sector requirements into Solvency II Level 2 Measures without further detailed analysis of their relevance to the insurance sector.<br><br>Specific comments on CEIOPS's draft advice are set out below. References to "Insurer" are to an insurer or reinsurer that transfers (re)insurance risks to an SPV. References to "Investors" are to persons providing finance to an SPV. | All principles and measures included in the Paper have the goal of giving the supervisory authority a guarantee for the effectiveness and efficiency of the SPV as a risk mitigation technique. |
| 23. | AVIVA | 1.5 | The paragraph states that the calculation of the liabilities and capital requirements for undertakings using SPVs is out of scope, and will be covered elsewhere, Aviva's view is that the quoted sentence is too vague, and that local regulators should be required to give appropriate credit for risks ceded to any SPV authorised under the | Noted. The scope of the paper and the cooperation between supervisors has been clarified. |

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| | | | directive, and that the necessary rules to provide for this should be included (perhaps mirroring the treatment of EU reinsurers?). Although it may be appropriate to leave certain details to the discretion of local regulators, there should be a firm principle established that credit should be given for such business, and the fully funded nature of the SPV should ensure that credit risk between the undertaking and SPV is minimal. | |
| 24. | CEA | 1.5 bullet 5 | We understand that undertakings will have the onus of proving if parametric/modelled loss arrangements and other types of deals fall under the scope of this paper or are actually derivatives which fall under the scope of future papers. In any case, all forms of risk transfers generate regulatory benefits for an undertaking to the extent that the risk transfer can be demonstrated to be effective. | Noted. |
| 25. | ESF | 1.5 | The definition of "special purpose vehicle" is:<br>"any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism **are subordinated to the reinsurance obligations of such an undertaking**"<br>Paragraph 1.5 of the Consultation Paper states that the paper deals with SPVs as defined in the Directive, that is SPVs "that reinsure risks from a (re)insurance undertaking **and that assume risks under an arrangement that has the economic substance of a reinsurance contract by transferring insurance risk from a (re)insurance undertaking to third parties (in this case investors)".**<br>We would request confirmation that, if the nature of the contract under which risk is transferred is **not** reinsurance, then the SPV is | The scope of the paper has been clarified:<br>The SPV must: assume risk from an undertaking through a reinsurance contract; **or** assume insurance risks from an undertaking transferred through a contract that is 'reinsurance like'. |

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| | | | outside the Consultation Paper. While we believe this is the effect of the words in bold cited from the definition of "special purpose vehicle" above, it is less clear, from the words in bold above extracted from paragraph 1.5 of the Consultation Paper that paragraph 1.5 is seeking so to confine itself.<br><br>For example, the form and mechanics of parametric/model loss deals are most often derivatives (not (re)insurance) and so we consider would fall under the bullet points which state the matters the paper is not dealing with. In such cases the SPV would not need to comply with any of the listed requirements since only (re)insurance deals are required to adhere to these SPV requirements.<br><br>In any case this paragraph requires clarification to stress that derivative risk transfer solutions are not subject to this regulation, thus we propose to delete *[and that assume risks under an arrangement that has the economic substance of a reinsurance contract……..(in this case investors)].* Otherwise this wording could inappropriately scope in alternative non-insurance arrangements not intended for this regulation such as contingent loans, contingent capital arrangements and parametric/modelled loss based transactions.<br><br>Additional clarification could be achieved by amending the sixth bullet point as follows:<br><br>Other forms of risk mitigation *[such as derivatives based arrangements (e.g. parametric/modelled loss),]* which could… | |
| 26. | ESF | 1.5 | It is important that under the principle of substance over form there should not be discontinuities in the recognition of capital relief of the sponsoring undertaking for example between (re)insurance (indemnity-based) arrangements and those non-(re)insurance arrangements (eg specific parametric/model loss deals with so little basis risk that they are close to "insurance"). This should not affect | Noted |

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| | | | whether the counterparty (if a single purpose company) is required to be regulated. If it is not providing (re)insurance then it would not seem appropriate for it to be regulated within the proposals. | |
| 27. | GDV | 1.5 | We understand that undertakings will have the onus of proving if parametric/modelled loss arrangements and other types of deals fall under the scope of this paper or are actually derivatives which fall under the scope of future papers. In any case, all forms of risk transfers generate regulatory benefits for an undertaking to the extent that the risk transfer can be demonstrated to be effective. | Noted |
| 28. | Ireland Solvency 2 Group | 1.5 and 1.6 | The paper specifically states that it is limited to providing guidance on the requirements for authorisation and supervision of a SPV itself. It does not address the requirements to be imposed on undertakings that use SPVs for risk transfer; nor does it address the use of SPVs where non-insurance risk is transferred. It will be important to ensure that the requirements imposed in such circumstances are proportionate and reasonable if innovative use of SPVs by EU/EEA (re)insurance undertakings is to be encouraged and facilitated. | Noted |
| 29. | L&G | 1.5(w)<br>3.3.5(w) | **External Investors**<br>Other than a brief mention of Intra-group SPV's in 3.3.5, the proposals in 1.5 seem to assume the presence of external investors. This is not specified in the Directive and we do not feel is a necessarily requirement since purely internal SPVs can be a valuable risk management tool. | Noted. A section on internal SPVs has been added at the end but CEIOPS would still want to see it comply with the principles in the paper. |
| 30. | L&G | 1.5(w)<br>3.14(w) | **Allowance for Existing SPVs**<br>Section 1.5 aims to exclude SPVs authorised before 31st Oct 2012, which is helpful. However, existing ISPV's may be brought into the scope of this paper if they continue to carryout management actions | In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. In addition the scope of the paper has been clarified. |

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| | | 3.19(b) | that we feel are both sensible and necessary such as recapitalising the vehicle to ensure the reinsurance remains effective or continue to write business under existing treaties. Such actions would be classified as "reusing" the SPV (3.14, 3.19) and would therefore be subject to the proposals in the paper. | |
| 31. | Munich Re | 1.5 | This paper shall be applicable to SPVs "that assume risks under an arrangement that has the economic substance of a reinsurance contract". The expression "economic substance of a reinsurance contract" should be defined. This could mean that only SPVs are under the scope of this paper, which accept risks on an indemnity basis or the risk transfer agreement at least contains an UNL (ultimate net loss) provision.<br><br>On the other hand regulatory capital relief should also be adequately granted to non-indemnity SPVs (parametric or index triggered coverages). In this case clear measures should be implemented how basis risk will be analysed and treated. (see 3.3). | The scope of the paper has been clarified. |
| 32. | PWC LLP | 1.5 | Footnote 3 to paragraph 1.5 states "out of scope of this paper are the calculations for technical provisions and capital relief concerning SPVs that already exist and that are therefore not required to be authorised under this regime as stated in Article 209 (3)." Whilst the authorisation of such pre-existing SPVs is outside the scope of the Directive the calculation of best estimate liabilities and capital requirements by insurers which invest in such pre-existing SPVs will be subject to the Directive. As a result any Level 2 implementing measures or Level 3 guidance dealing with best estimate liabilities and/or capital requirements of insurers which invest in SPVs should cover both those SPVs authorised under the Directive and those pre-existing SPVs exempt from authorisation. | The advice provided by the IGSRR WG does not cover technical provisions and capital relief concerning SPV's that already exist. This should be covered by other CPs from CEIOPS (31 and 52). |
| 33. | CEA | 3.2 | While we understand that CEIOPS believes the credit taken for the | CEIOPS believes allowing an SPV to |

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| | | | arrangements inside a group is more certain, it remains unclear why CEIOPS has the opinion that an SPV cannot be established by multiple undertakings from different groups, by means of jointly controlled entities or joint venture for example. Some explanations would be helpful in this regard. | be established by multiple undertakings from different groups will make the arrangement more difficult to understand. The benefits from greater clarity outweigh the costs. This has been clarified in the advice. |
| 34. | ESF | 3.2 | While we understand that CEIOPS believes the credit taken for the arrangements inside a group is more certain, it remains unclear why CEIOPS has the opinion that a SPV cannot be established by multiple undertakings from different groups, by means of jointly controlled entities or joint venture for example. It is common, for example, for bankruptcy remote vehicles to be set up to acquire receivables from more than one originator and it is difficult to see why similar techniques should not be available in the insurance sector. Some explanation would be helpful in this regard. | See 33 |
| 35. | FFSA | 3.2 | The §3.2 states that "an SPV should only be established by one group and not by a number of undertakings from different groups".<br>We do not understand the restriction and we would like to get some explanations for it. | See 33 |
| 36. | Ireland Solvency 2 Group | 3.2 | This paragraph states that a SPV should only be established by one group and not by a number of undertakings that do not form part of the same group – however the paper gives no justification for this view. To limit the establishment of a SPV in this way will effectively limit the availability of the securitisation technique to larger operators and groups and so could be seen as anti-competitive. We see no reason for this restriction. | See 33 |
| 37. | KPMG | 3.2 | We agree that it does not seem appropriate for an SPV to be established by a number of different undertakings, except where they are part of the same group, given the means in which supervision of | Noted |

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| | | | the SPV and the ceding undertakings is to be performed. | |
| 38. | Munich Re | 3.2 | This states that SPVs shall only be established by one group, which from a transparency and clear legal liability point of view would be favourable. Nevertheless there may be situations (pool solutions) where only for more than one insurer or groups (especially smaller players) it is possible to establish a SPVs. This shall not be prevented always provided that there is a clear legal provision as to separate individual liabilities and obligations. | See 33 |
| 39. | ESF | 3.3 | Undertakings using insurance SPVs that are outside the scope of Art 209 (i.e. non EU area) should be given equivalent relief according to the substance of the risk transfer.<br><br>Can the final sentence be amended so its introduction reads: "Failure to gain authorisation in the Member State in which such SPV is located would result …". | This section has been clarified as it did not refer to non-EU SPVs.<br><br>Non-EU SPVs are not covered by this advice and are not automatically dealt with like authorised SPVs. They should be treated as other risk mitigation tools, with the equivalence regime being taken into account, in order to avoid regulatory arbitrage (setting up SPVs outside of the EEA but getting equivalent capital relief). |
| 40. | Munich Re | 3.4 | For non-indemnity structures it should be in the discretion of the (re)insurer to obtain a license for the SPV to be granted regulatory capital relief (see 1.5 above). | This has been clarified in the advice. See 7. |
| 41. | CEA | 3.4 | We welcome the re-affirmation that the use by undertakings of SPVs, outside art. 209, is to be given relief according to their substance of risk transfer, as in the case of insurance SPVs falling under article 209. | This has been clarified in the advice.<br><br>In future CEIOPS may develop Level 3 guidance to achieve the |

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| | | | Further, such SPVs not falling within the scope of this advice should be allowed if they are meeting the requirements as stated in the CP 31 and/or perhaps other future advices. Whether these SPVs are allowed or not should not be left to the discretion of the various supervisors in each Member State, but should be harmonised across European member states. | adequate level of harmonisation. |
| 42. | ESF | 3.4 | The re-affirmation that an undertaking's use of SPVs which are outside the scope of article 209 (i.e., non-insurance SPVs) are to be given equivalent relief as those within the scope of art. 209 (insurance SPVs) according to the substance of the risk transfer is welcomed. | The use of SPVs outside the scope of Art. 2009 for regulatory capital relief should be covered by other CPs from CEIOPS. |
| 43. | Lloyds | 3.4 | We note that it is proposed to leave authorisation of non-insurance SPVs to the discretion of supervisors in each Member State. We wonder whether this could result in a lack of harmonisation across Member States (and reduce the level playing field across Europe) concerning the use of non-insurance SPVs to provide regulatory capital relief in respect of financial mitigation techniques. | The use of SPVs outside the scope of Art. 2009 for regulatory capital relief should be covered by other CPs from CEIOPS. |
| 44. | CEA | 3.5 | These questions are all relevant to the understanding of the risk transfer arrangement and we support them. In our opinion another very important assessment to be made by a supervisor is whether the SPV is an independent entity or not.<br>Some further clarification is needed on:<br>• the second point. Trigger events might be replaced by "terms and conditions".<br>• the 6th point about the difference between benefit of SPVs and traditional securitization. Some undertakings may not be in the position to make such comparisons particularly because these | The list provided is not exhaustive but are examples of areas that supervisors should consider.<br>Agreed<br>Noted - if this is not applicable then this point should be made at |

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| | | | transactions are often private and information is thus not publicly available. | authorisation. |
| 45. | ESF | 3.5-3.6 | Sixth bullet point is unclear and requires clarification as to what is the purpose of the reference to "traditional securitisation". Undertakings may not be in the position to make such comparisons particularly because these transactions are often private and information is thus not publicly available, so it would be best to delete this bullet | See 44 |
| 46. | FFSA | 3.5 | SPV regulator should explain the 6th bullet point: "How does this benefit differ from the treatment of traditional securitisation?"<br>This should be clarified. What publicly placed securitizations do not use an SPV? | See 44 |
| 47. | CEA | 3.7 | The CEA supports this paragraph stating that level 2 measures which are adaptable to future developments are essential. Any more specific details at this level, restricting in effect the principles, are potentially counterproductive. | Noted |
| 48. | ESF | 3.7 | The ESF supports this paragraph stating that level 2 measures which are adaptable to further developments are essential. Any more specific details at this level, restricting in effect the principles, are potentially counterproductive. | See 47. |
| 49. | IUA | 3.7 | We support the application of a high-level principles based approach for the supervisory framework of SPVs, whilst avoiding the inhibition of their ongoing evolution and development. In the face of evolutionary changes and developments in way SPV's operate, a framework that is adaptable to such developments and changes will likely to be more effective at regulating SPV's than a rigid framework. | Noted |
| 50. | Ireland Solvency 2 group | 3.9 to 3.15 | These paragraphs state that a SPV may be "reused" once its initial contract has expired. They also make reference to a SPV having additional risk reinsured into it during its lifetime (which suggests that a SPV can be a multi-issuance vehicle i.e. can undertake a | The scope of authorisation has been revisited given feedback.<br>The potential re-use of of SPVs has |

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| | | | number of bond issuances through one vehicle rather than having to establish different vehicles for each bond issuance). This is a question that has arisen in practice regarding the interpretation of the current provisions of the EU Reinsurance Directive (Directive 2005/68/EC) and those involved in the securitisation industry would welcome an explicit statement that a SPV can have additional risk reinsured into it during its lifetime, can be reused once initial risks reinsured into it have expired, and can operate as a multi-issuance vehicle. | been clarified in the advice.<br>Multi-issuance vehicles may be covered at Level 3 but are likely to be assessed at authorisation. |
| 51. | CEA | Section 3.2 | Securitization transactions done through SPV's often include clean-up call features to allow for an anticipated redemption of the transaction when the economics do not justify keeping the transaction running (ongoing cost of transaction exceed remaining benefit). This can be the case for Cat Bonds where clean up call options can be included when 90% or more of the principal has been wiped out following an event. To date, the Consultation Paper does not contemplate such clean-up call.<br>We recommend that the CP includes this option in the section 3.2, to specifically allow this possibility. | In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation if not this should be assessed at authorisation. |
| 52. | CEA | 3.10,3.18 | This paragraph states that the SPV is "only permitted to reinsure insurance risks". This definition seems more restrictive than the one included in the 2005 reinsurance directive. Certain transactions can be a mix of insurance risk and credit risk (eg. a transfer of risk of deviation of loss ratio for credit insurance). We consider that as long as insurance and potentially other risks are clearly identified and measured, the use of a SPV should not be so restrictive.<br>We also suggest dropping "or assume insurance risks under "reinsurance-like" arrangements" since such wording might have unintended scope consequences. | CEIOPS has clarified the scope of authorisation. |
| 53. | ESF | 3.10-3.18 | This paragraph states that the SPV is "only permitted to reinsure insurance risks". This definition seems more restrictive than the one | See 52 |

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| | | | included in the 2005 reinsurance directive and does not seem to be consistent with the definition of "special purpose vehicle" which refers to it as being an undertaking, "which assumes risks from insurance or reinsurance undertakings". We consider that as long as risks are clearly identified and measured, the use of a SPV should not be restricted to "insurance risks". With respect to the definition of insurance risk, we would ask for clarification of the fact that insurance risk covers all risks entailed within an insurance product.<br><br>As the current wording might have unintended scope consequences and is redundant given that the regulation is aimed at insurance and / or reinsurance arrangements we would propose the following rewording:<br><br>[The SPV is only permitted to reinsure insurance risks from undertakings i.e. delete *[(or assume insurance risks under 'reinsurance-like' arrangements)*]. | |
| 54. | FFSA | 3.10<br>3.18 | §3.10 states that the SPV is "only permitted to reinsure insurance risks". This definition seems more restrictive than the one included in the 2005 reinsurance directive. We consider that as long as risks are clearly identified and measured, the use of a SPV shall not be so restrictive.<br><br>The CP should also clarify and detail the meaning of insurance risk. In certain transactions there can be a mix of insurance risk and credit risk (e.g. a transfer of risk of deviation of loss ratio for credit insurance). | See 52. |
| 55. | L&G | *1.5(w)* | **Risks Covered**<br><br>As noted in the overall comments, we fundamentally disagree with the approach taken in this paper as it appears to misinterpret article 13(22) by narrowly defining SPV's to cover only insurance risks. | See 52 |

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| | | 3.10(w)<br>3.19(b)<br>3.85(w)<br><br>3.37(w) | Section 3.10 and 3.19 both limit SPVs to only taking insurance risk and 3.85 supports that requirement by indicating that all risks other than insurance risk would be retained by the ceding company. As a result, this approach creates significant issues for SPVs setup to house a broader range of risks (including our internal ISPV, Legal & General Pensions Limited ("LGPL")).<br><br>An example of the issue described above is that the investment principles proposed require that "minimal investment risk" be taken by the SPV which we believe is a restriction not required by the Directive as it restricts reinsurance that can be placed with an SPV compared with a reinsurer. Given the long term nature of life assurance liabilities, such a restriction would be very limiting. | |
| 56. | CEA | 3.12-3.19 | We support the idea of this paragraph that the reuse provisions are important.<br><br>In such context, the terms "programme" versus "transaction" should be defined more precisely.<br><br>The reuse anticipated under certain programmes retains the flexibility to issue subsequent series of notes based on payout triggers and financial terms different than for SPV's initial issuance. However any subsequent issuance would need to be within the boundaries of the SPV's limited-scope articles of incorporation approved by the regulator during the SPV's initial original authorisation. To this point, as part of the initial authorisation, the SPV should be able to demonstrate its ability to remain compliant with the authorisation requirements as part of any subsequent new issuance. | Noted.<br><br>The conditions for re-use have been clarified given this feedback. |

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| | | | The CEA believes that if in the authorisation process the (re-)insurance undertaking has stated it has an aim in re-using the SPV than a re-approval should not be necessary when the same circumstances apply as at inception of the establishment of the SPV for which an authorisation was granted and the SPV is acting within its articles of incorporation. A system of re-approval should only be applied when the circumstances are changing or the objective of the SPV is different or when the SPV's incorporation documents have been amended. Such a process would limit the administrative burdens for (re-)insurers.<br><br>The footnote 13 introduces a distinction between initial authorization and approval. We consider that the CP should precisely define which level of documentation that should be provided in both cases.<br><br>The consultation paper does not appear to address specific SPVs structured with segregated compartments, existing in certain markets. It could be useful to precise that when SPVs are structured with segregated compartments, each compartment should be considered to be, and treated as, a separate SPV. However, as mentioned for a shelf program it should be possible to receive a one-off authorization for the issuance of compartments that are alike. | In CEIOPS' view, segregated compartments may be explored to a greater extent at Level 3. |
| 57. | ESF | 3.12-3.19 | We support the current drafting, which correctly emphasises that the reuse provisions are important. The reuse features anticipated under a programme, (for example, permitting issuance of up to €1 billion), can permit flexibility to issue subsequent series of notes based on payout triggers and financial terms different than the SPV's initial issuance (of, say, €200 million). However any subsequent issuance would need to be within the boundaries of the SPV's limited-scope approved by the regulator during the SPV's initial original authorisation. To this point, as part of the initial authorisation, the SPV should be able to demonstrate that its ability to remain | Noted.<br><br>See 56. |

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| | | | compliant with the authorisation requirements as part of any subsequent new issuance.<br><br>On that basis we believe that for subsequent issuances no "re-authorisation" process is warranted but that, instead, it would be more appropriate for the SPV to obtain an approval from the SPV's regulator. The expectation would be that such approval process would be very streamlined and quick, and essentially be limited to ensuring the SPV is acting within its original scope. Additionally, it is expected that the SPV would remain fully funded with respect to its increased potential obligations to the undertaking, and would remain fully funded and compliant with other applicable requirements subsequent to any new issuance. | |
| 58. | FFSA | 3.12<br>3.19 | The terms "programme" versus "transaction" used in this section should be defined more precisely.<br><br>The footnote 13 introduces a distinction between initial authorization and approval. We consider that the CP should precisely define which level of documentation should be provided in both cases.<br><br>Also, the section states that "the anticipated reuse of an SPV needs prior approval from the supervisory authority". The footnote indicates that approval has to be distinguished to the initial authorisation. The word anticipated can lead to some confusion: indeed, it is unclear whether the "anticipated reuse" can be validated through the initial authorisation process, and then approved when utilised, or if once the initial authorisation has been provided, and that the SPV anticipates a reuse, it has to go through an approval process. Clarification shall be made on this section. It should also be clarified in which cases a reuse would not require new authorization/approval. In the case of a shelf program that would clearly define the boundaries of future issuances and leave no or little flexibility for divergences between the different issuances under the program a | The supervisory authority must have enough information to both authorise and approve an SPV as they get full automatic recognition as a mitigation technique. We have clarified some of the documentation requirements in the advice and stated that it should be proportionate to the nature, scale and complexity of the SPV transaction.<br><br>The conditions for re-use have also been clarified. |

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| | | | one-off authorization for all issuances under the program should suffice.<br><br>The consultation paper does not address ISPVs structured with segregated compartments (France's recent ISPV regulations allow compartment vehicles). It could be useful to precise that when ISPVs are structured with segregated compartments, each compartment should be considered to be, and treated as, a separate ISPV. However, as mentioned for a shelf program it should be possible to receive a one-off authorization for the issuance of compartments that are alike. | In CEIOPS' view, segregated compartments may be explored to a greater extent at Level 3. |
| 59. | GDV | 3.12., 3.19 | The reuse provisions are important. For example, the reuse anticipated under certain programmes retains the flexibility to issue subsequent series of notes based on different trigger types than the initial issuance.<br><br>In such context, the terms "programme" versus "transaction" should be defined more precisely. Also the word "anticipated" can lead to some confusion: indeed, it is unclear whether the "anticipated reuse" can be validated through the initial authorisation process and then approved when used, or if once the initial authorisation has been provided and the SPV anticipates a reuse, it has to go through an approval process.<br><br>The GDV believes that if in the authorisation process the (re-)insurance undertaking has stated it has an aim in re-using the SPV than a re-approval should not be necessary when the same circumstances apply as at inception of the establishment of the SPV for which an authorisation was granted. A system of re-approval should only be applied when the circumstances are changing or the objective of the SPV is different, limiting the administrative burdens for (re-)insurers.<br><br>The footnote 13 introduces a distinction between initial authorization | The conditions for re-use have been clarified.<br><br>We have clarified some of the documentation requirements in the advice and stated that it should be proportionate to the nature, scale and complexity of the SPV transaction. CEIOPS does not intend to precisely define the |

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| | | | and approval. We consider that the CP should precisely define which level of documentation that should be provided in both cases. | requirements at this stage. |
| 60. | Munich Re | 3.12 | In case of a programme SPV the initial authorisation should also cover future reuses. It appears to be impractical and not necessary to seek for approval for every issuance as long as there are no new regulatory implications. The multi-issuance SPV should be initially authorised for all future issuances within the defined framework and an additional approval procedure should be reserved only for cases of relevant material changes. | The conditions for re-use have been clarified given feedback. |
| 61. | CEA | 3.13 | This section seems to open the reuse in the case only of a "*very different purpose*". We understand that a SPV is solely established for assuming insurance risks and transfer these risks to the capital markets. Therefore, it remains unclear what "*very different purpose*" is supposed to mean in that context.<br><br>For example, there are instances in which a specific tranche of the exposure is assessed as part of a transaction, but then due to strategic reasons is placed in the market in a staged manner rather than in one go.<br><br>For clarity the CEA proposes the following addition to 3.13.: '<u>The practice of part issuance of specific tranches, assessed as part of a transaction, but then placed in the market in a staged manner should be considered as part of the original approval not as a reuse.</u>' | See 60 |
| 62. | ESF | Para 3.13[1] | This section seems to open the reuse in the case only of a "*very different purpose*". We understand that SPV are solely established for assuming risks from insurers and transfer these risks to the capital markets. Therefore, it remains unclear what "*very different purpose*" is supposed to mean in that context. For example, there are | See 61 |

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| | | | instances in which a specific tranche of the exposure is assessed as part of a transaction, but then due to strategic reasons is placed in the market in a staged manner rather than in one go.<br><br>For clarity, the ESF proposes the following addition to 3.13.:<br><br>[‘*The practice of part issuance of specific tranches, assessed as part of a transaction, but then placed in the market in a staged manner should be considered as part of the original approval not as a reuse*.’] | |
| 63. | GDV | 3.13 | This part deals with the potential reuse of the SPV if the original purpose was liquidated. Section 3.17. seems to open the reuse in this case only for a “*very different purpose*”. We understand that SPV’s are solely established for assuming insurance risks and transfer these risks to the capital markets. Therefore, it remains unclear how “*very different purpose*” is supposed to mean in that context. | See 61 |
| 64. | IUA | 3.13 | Given that Para 3.10 only permits a SPV “to reinsure insurance risks…from undertakings”, further clarification on what constitutes a “very different purpose” for the purposes of reusing a SPV. | Noted. See 61. |
| 65. | Munich Re | 3.13 – 3.19 | It should be noted that a reuse for “a very different purpose” may not be useful, as also the by-laws of the SPV company would have to be changed and the necessary changes would require nearly the same efforts as a new foundation. It of course has to be secured that all former obligations have ceased, but this could also be achieved differently e.g. with a “cool-down phase”.<br><br>More important this shall not hinder the establishment of programme structures, where one SPV is used for several issuances. It should be clearly stated that a further issuance from one SPV shall not be regarded as a “reuse”, as to the paragraph before. | See 61 |
| 66. | CEA | 3.14 | We agree that reinsurance/retrocession of any additional risks to the SPV should require prior approval by the SPV supervisor and that the approval process should be proportionate in nature. For purposes of | Noted. |

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| | | | clarity, we suggest a distinction be made between subsequent issuance as anticipated under a 'programme' – whereby prior approval of the regulator is appropriate and sufficient – versus a new issuance relating to additional risks which were not contemplated at the time of initial authorisation). For the later case a re-authorisation process should occur and be proportionate in nature.<br><br>CEIOPS introduce the concept of proportionality. However also the duration in which the supervisor takes a decision, whether the use of an SPV is granted, should be limited. Any unlimited approval process would lead to unwanted uncertainties for the (re-)insurer and any investors willing to invest in such a SPV. | Noted. The timings of the approval process should be developed under Level 3 but CEIOPS believes that it should not be longer than the timing to approve an insurance or reinsurance undertaking. |
| 67. | CEA | 3.14-3.19 | The CP defines the changes leading to the need for approval as "additional risks reinsured into it (…), any changes made to the contracts involved".<br><br>We understand under this paragraph that the following changes would not result in approval needed:<br><br>3. clause of reset of portfolio, included in the initial contract,<br><br>4. change in a financial instrument counterparty (e.g. total return swap), having the same credit rating.<br><br>Structures that are recharged periodically with the recharge option initially planned in the contract | See 61 |
| 68. | ESF | 3.14 | We agree that reinsurance/retrocession of any additional risks to the SPV should require prior approval by the SPV supervisor and that the approval process should be proportionate in nature. For purposes of clarity, we suggest a distinction be made between subsequent issuance as anticipated under a "programme" – whereby approval of the regulator when the original programme is established should be appropriate and sufficient – versus a new issuance relating to | Noted |

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| | | | additional risks which were not contemplated at the time of initial authorisation). For the latter case a re-authorisation process should occur and be proportionate in nature. | |
| 69. | ESF | 3.14-3.19 | The CP defines the changes leading to the need for approval as "additional risks reinsured into it (…), any changes made to the contracts involved".<br><br>We consider that the CP should be more precise, and that the definition of changes should not be too extensive. In particular, we would like the confirmation that the following patterns are not leading to a need for additional approval:<br><br>• clause of reset of portfolio, included in the initial contract,<br>• change in a financial instrument counterparty (e.g. total return swap), having the same credit rating; and<br>• structures that are recharged periodically with the recharge option initially planned in the contract.<br><br>We feel the principles in 3.14 and 3.19 should clarify that only changes which adversely impact the SPV's fully funded nature or which were unanticipated at the SPV's setup should require prior regulatory approval; otherwise the language is appropriate as drafted and we believe extra precision is not required. Therefore, we suggest 3.14 be amended as follows:<br><br>["…, has any changes made to the contracts involved *which negatively impacts the SPV's fully funded status with respect to its obligations to the undertaking, were unanticipated at the time of initial authorisation, or change its risk characteristics* or has further capital raised…"]. | See 61 |
| 70. | FFSA | 3.14 | The CP defines the changes leading to need for approval as | See 61 |

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| | | 3.19 | "additional risks reinsured into it (…), any changes made to the contracts involved".<br>We propose to add "**material**" before the term "**changes**" in the sentence above.<br>Otherwise, we consider that the CP shall be more precise, and that the definition of changes shall not be too extensive. Noticeably we would like the confirmation that the following patterns are not leading to a need for additional approval:<br>• clause of reset of portfolio, included in the initial contract,<br>• change in a financial instrument counterparty (e.g. total return swap), having the same credit rating,<br>• structures that are recharged periodically with the recharge option initially planned in the contract. | |
| 71. | Lloyds | 3.14/3.19 | We note that any changes to the SPV's characteristics during the lifetime of the SPV need to be subject to prior supervisory approval. Whilst we note that such approval process should be proportionate to the nature, scale and complexity of the transaction, we consider that the duration of any such approval process should be limited, in order to provide certainty to undertakings wishing to use the SPV for risk mitigation and to investors in the SPV. | CEIOPS believes that it should not be longer than the timing to approve an insurance or reinsurance undertaking. |
| 72. | CEA | 3.15 | We understand CEIOPS' concern here and how the threat of an instant move to zero recognition requires the need for an ongoing oversight. But we believe that a full loss of regulatory capital credit by an undertaking due to the SPV's loss of authorisation is inconsistent with the principles based approach whereby an undertaking is permitted to take credit for all arrangements where effective risk transfer can be demonstrated. Under these principles, any loss of credit by the undertaking would only be warranted to the extent that the SPV's loss of authorisation negatively impacted the | Noted. CEIOPS has clarified the process (as being similar to that at authorisation or breaching any mandatory conditions). |

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| | | | undertaking's ability to recover amounts otherwise due from the SPV.<br>We suggest this provision be reviewed in light of the effective risk transfer principles, to ensure any loss of regulatory capital credit is proportionate.<br>The CEA proposes redrafting as '... failure to gain authorisation may result in no regulatory relief from the SPV (……). The corresponding supervisors should take a proportionate approach to issues that might impair the relief accruing to the ceding entity but can be remedied in a reasonable time frame.' | |
| 73. | ESF | 3.15 | We understand CEIOPS' concern here and how the threat of an instant move to zero recognition will ensure ongoing oversight. However, it could cause instability for the ceding entity and precipitate unnecessary difficulties. ESF proposes redrafting as follows:<br>*['... failure to gain authorisation may result in no regulatory relief from the SPV (……). The corresponding supervisors should take a proportionate approach to issues that might impair the relief accruing to the ceding entity but can be remedied in a reasonable time frame.']*<br>We observe that a full loss of regulatory capital credit by an undertaking due to the SPV's loss of authorisation is wholly inconsistent with the principles based approach whereby an undertaking is permitted to take credit for all arrangements where effective risk transfer can be demonstrated. Under these principles, any loss of credit by the undertaking would only be warranted to the extent (i.e. amount) that the SPV's loss of authorisation negatively impacted the undertaking's ability to recover amounts otherwise due from the SPV. It is expected that such occasions would be rare. We | See 72 |

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| | | | suggest this provision be reviewed in light of the effective risk transfer principles, to ensure any loss of regulatory capital credit is proportionate | |
| 74. | AVIVA | 3.17 | Aviva believes that the provisions around authorisation and consultation between regulators are entirely appropriate. However, the final sentence states:<br>*"The quantitative impact of the SPV on the technical provisions and capital requirement of the undertaking is in the remit of the supervisory authority of the undertaking".* | Noted. |
| 75. | KMPG | 3.17 and others | We agree with the concept of communication between the supervisory authority of the SPV and that of the ceding undertaking.<br>Where there are a number of ceding undertakings within a group to the same SPV, it would be helpful if the paper were to clarify whether the intention would be to communicate with each of the supervisory authorities responsible for the solo entities or whether this would be co-ordinated through discussion with the group supervisor. | Noted. CEIOPS has clarified that this is the case. |
| 76. | ABI | 3.18-3.20 | We agree with the proposed limitations on the scope of authorisation for ISPVs. | Noted |
| 77. | Lloyds | 3.18-3.19 | With respect to the scope of authorisation:<br>(i) At para 3.18 – for consistency with the language used in paragraph 3.10 and general clarity, it may be useful to add the words "reinsurance or" before the words "'reinsurance like' arrangements" in the first line, so that the paragraph would read:<br>"The SPV shall only assume, under reinsurance or 'reinsurance like' arrangements, insurance risks from insurance and reinsurance undertakings as required by Article 13(22) and shall therefore be restricted from engaging in activities other than accepting insurance | The scope of authorisation has been clarified given feedback. |

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| | | | risks from undertakings (except for activities directly arising from that business)".<br><br>(ii) At para 3.19 – for consistency with the above change it may be helpful to alter the phrase "additional risks reinsured" in the second line to "additional risks assumed". This would also be consistent with the definition of 'special purpose vehicle' in Article 13(22) of the Directive, which uses the phrase "assumes risks". | |
| 78. | Munich Re | 3.18 | This also refers to the annotation on Para 1.5 and weather derivative contracts shall be included (meaning acceptance of risks by SPV on parametric or index trigger basis) | The scope of authorisation has been clarified. |
| 79. | Pearl | 3.18-3.20 | We agree with the proposed limitations on the scope of authorisation for ISPVs. | Noted, but CEIOPS felt that the scope of authorisation needed to be clarified. |
| 80. | Solvency II Legal Group | 3.18 | **Scope of authorisation**<br>*CEIOPS advises: The SPV shall only assume, under 'reinsurance like' arrangements, insurance risks from insurance and reinsurance undertakings as required by Article 13(22).*<br>Article 13(22) of the Framework Directive defines an SPV according to whether it "assumes risks from" Insurers and does not limit those risks to "insurance risks". Our interpretation of this definition is that it covers any transaction involving the assumption of insurance risk by an SPV, notwithstanding that other risks associated with that insurance risk are transferred to the SPV as part of the same transaction (e.g. credit, market, liquidity, operational risk). This interpretation reflects how risks may be transferred under traditional reinsurance arrangements and is not, we believe, inconsistent with comments made by CEIOPS in paragraph 3.85, which recognise that | The scope of authorisation has been clarified. |

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| | | | non-insurance risks may also be retained by the Insurer. It is also consistent with comments made by CEIOPS in paragraph 3.4 about SPV transactions involving the transfer of non-insurance risks (in which case there is no need for a special SPV regulatory regime at all).<br><br>We would welcome clarification from CEIOPS in its advice that our understanding is correct and that the reference to "insurance risks" in paragraph 3.18 is not intended to restrict the application of Article 13(22) to SPVs that only assume insurance risk from the Insurer. A narrower interpretation of Article 13(22) would, in our view, be unjustified on the basis of the wording of that provision. It would also limit significantly the use of SPVs in the insurance sector. Finally, requiring the Insurer to retain all risk other than "pure" insurance for its own account would mean that other requirements proposed by CEIOPS in CP36 (e.g. the requirement in paragraph 3.86 for some alignment of interests between the Insurer and the SPV) become unnecessary.<br><br>Generally, it would be helpful if CEIOPS could provide guidance on what it understands by "reinsurance like" arrangements | Further material has been added to the 'Effective risk transfer' principle. In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. |
| 81. | CEA | 3.20 | This paragraph describes the different additional requirements when a SPV is not located in the same EEA jurisdiction as the undertaking which transfers the risk.<br><br>We agree there should be open communication and cooperation of regulators as necessary in order to timely realise transactions. We believe however the existing wording could result in a form of double regulatory approval and thus result in undue delays.<br><br>In order to avoid confusion between the roles of the two supervisors, we propose operating the following distinction:<br><br>• the authorisation of the SPV as a reinsurance vehicle (checks | CEIOPS believes that cooperation between supervisory authorities is important as decisions taken by one authority can impact another. We have clarified the process around the role of different supervisors. |

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| | | | of full funding, reporting requirements...)<br>• the granting of regulatory benefits to the undertaking for the risk transfer into the SPV<br>Further we suggest the supervisor of the SPV to be in charge with the authorisation and approval. On the other side the risk transfer treatment would fall under the charge of the undertaking regulator.<br>This will imply to flag in the documentations required the one to be agreed by the supervisor of the home country of the SPV and the one to be agreed by the undertaking supervisor. | |
| 82. | CEA | 3.20 | The CP makes the case for the EEA jurisdiction under which a SPV is established. Notwithstanding our initial proposal to focus more on the treatment of the SPV by the undertaking, for the authorisation process it might also be considered that an SPV could be established under different jurisdictions and thus it would seem useful to define principles for this case too, ensuring a level playing field for the various possibilities. | If an SPV is established outside the EEA it is outside the scope of this advice. |
| 83. | ESF | 3.20 | We agree there should be open communication and cooperation by regulators as necessary in order to timely effect transactions. As drafted, however, the existing wording could result in a form of double regulatory approval and thus result in undue deliberations and delays. In practical terms, we propose clarifying that:<br>• the SPV's regulator shall inform the undertaking's regulator the extent/amount to which the SPV shall be fully funded with respects to the SPV's potential obligations to the undertaking. With this information the undertaking's regulator can assess whether the undertaking is recognising the appropriate level of benefits for the transaction; and<br>• the SPV's regulator shall inform the undertaking's regulator, and the undertaking's regulator shall accept, that the SPV has | See 81 |

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| | | | been duly authorised in accordance with art. 209.<br>We feel the last sentence should be deleted as it is better suited for the regulators to determine which, if any, of the documentation accompanying the authorisation request should be exchanged.<br>We propose to lighten this double review and to align the authorisation by the undertaking's supervisor with the authorisation by the supervisor where the SPV is established: we suggest the supervisor of the SPV to be in charge with the authorisation and approval, whereas the risk transfer treatment would fall under the charge of the undertaking regulator. This would avoid a burdensome process. Otherwise, the exchanges between supervisors should be clearly defined and include a time constraint to reply, as well as documented explanations if they have different opinions. | Supervisory authorities are required to exchange "relevant" documentation. |
| 84. | GDV | 3.20 | CEIOPS just makes a case for EEA jurisdiction under which a SPV is established. It might also be considered that an SPV could be established under different jurisdictions. Thus it seems to be useful to state principles for this case. | See 82 |
| 85. | Lloyds | 3.20 | It is proposed that, where an SPV is established by an undertaking in a different EEA jurisdiction to that of the undertaking, there must be consultation between the supervisory authority of the SPV and the supervisory authority of the undertaking, as required by Article 26. This could result in a burdensome process, unless there is a clear definition of the scope of exchanges between supervisors and their respective roles, including a time limit for the approval process. Presumably these are matters that will be addressed in protocols between supervisors, the detail of which could be referred to in Level 3 guidance? | CEIOPS believes that cooperation between supervisory authorities is important as decisions taken by one authority can impact another. We have clarified the process if the views of the supervisory authorities cannot be reconciled.<br>In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. |
| 86. | FFSA | Section 3.2 | Securitisation transactions often include clean-up call features to | In future CEIOPS may develop |

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| | | | allow for an anticipated redemption of the transaction when the economics do not justify keeping the transaction running. (ongoing cost of transaction exceed remaining benefit) This can be the case for Cat Bonds where clean up call options can be included when 90% or more of the principal has been wiped out following an event. To date, the Consultation Paper does not contemplate such clean-up call.<br><br>We recommend that the CP include this option in the section 3.2, to specifically allow this possibility. | Level 3 guidance to achieve the adequate level of harmonisation. |
| 87. | CEA | 3.22<br>3.49 | Sections 3.22 and 3.49 indicate that a breach of mandatory conditions could lead to withdrawing of the authorisation for the SPV.<br><br>We consider that an "escalation" process could be introduced, with a defined letter from the supervisor, a precise period for the SPV / Undertaking to provide with a response, and deadline for the SPV or undertaking to find a solution to repair the breach.<br><br>The CP should clearly define which regulator should act on which issue:<br>• if the breach is relating to the operating management or the "fully funded" principle, the home supervisor of the SPV will be involved;<br><br>if the breach is relating to the insurance risk, the undertaking supervisor will be responsible. | A breach of the mandatory conditions could lead to a withdrawal of the SPV's authorisation. However, this may not be immediate as the process should be 'escalated' in accordance with the proportionality principle.<br><br>CEIOPS believes that cooperation between supervisory authorities is important as decisions taken by one authority can impact another.<br><br>In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. |
| 88. | ESF | 3.22-3.49 | Sections 3.22 and 3.49 indicate that a breach of mandatory conditions could lead to withdrawing of the authorisation for the SPV.<br><br>We consider that an "escalation" process could be introduced, with a defined letter from the supervisor, a precise period for the SPV / Undertaking to provide with a response, and deadline for the SPV or undertaking to find a solution to repair the breach.<br><br>The CP should clearly define which regulator should act on which | See 87 |

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| | | | issue:<br>a. if the breach is relating to the operating management or the "fully funded" principle, the home supervisor of the SPV will be involved; and<br>if the breach is relating to the insurance risk transfer, the supervisor of the undertaking will be responsible. | |
| 89. | FFSA | 3.22<br>3.49 | Section 3.22 (and 3.49) indicates that a breach of mandatory conditions could lead to the withdrawing of the SPV.<br>We consider that an "escalation" process could be introduced, with a defined letter from the supervisor, a precise period for the SPV / Undertaking to provide with a response, and deadline for the SPV or undertaking to find a solution to repair the breach.<br>As underlined in our introductory comments ("legal status of SPV" and "Relationship between SPV and undertaking supervisors"), the CP should clearly define which regulator should act on which issue:<br>• if the breach is relating to the operating management or the "fully funded" principle, the home supervisor of the SPV will be involved;<br>• if the breach is relating to the insurance risk, the undertaking supervisor will be responsible. | See 87 |
| 90. | CEA | 3.23 | *"The supervisory authority where the SPV is established is responsible for the on-going supervision of the SPV."*<br>From this statement it is unclear to what type of supervision SPV will be subject to: the Solvency II directive and/or any other kind of supervision? | CEIOPS may cover this further in the Supervisory Review Process but CEIOPS considers that supervisors who need to check on-going compliance with the requirements. |
| 91. | CEA | 3.26 | We observe that the requirement to fully fund anticipated fees (i.e., those not yet incurred) is generally inconsistent with standard accounting practice for recognition of liabilities or contingent | Agreed. CEIOPS has amended its advice to take this into account. |

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| | | | liabilities, and would result in inefficiencies. As such this paragraph should not apply to fully funding of anticipated fees and expenses, as for a longer term transaction the fees and expenses in total can be a significant amount to put aside upfront rather than paying them when payment is legally due together with funding costs and other anticipated expenditures. These ongoing expenses of the SPVs are normally well defined and budgeted, structured for in the transaction to ensure they can be covered by investment return or other income receipts generated by the SPV (such as from the sponsor's binding commitment to cover the SPV running expenses). | |
| 92. | ESF | 3.26 | We observe that the requirement to fully fund anticipated fees (i.e., those not yet incurred) is generally inconsistent with current practice for recognition of liabilities or contingent liabilities, and would result in inefficiencies. As such this paragraph should not apply to fully funding of anticipated fees and expenses.<br><br>For a longer term transaction, the fees and expenses in total can be a significant amount to put aside upfront rather than paying them when payment is legally due together with funding costs and other anticipated expenditures. These ongoing expenses of the SPVs are normally well defined and budgeted for in the structuring of the transaction to ensure they can be covered by investment return or other income receipts generated by the SPV (such as from the sponsor's binding commitment to cover the SPV running expenses) can cover them. Additionally – alternatively the sponsor can commit to cover the running expenses of the SPV, a service provider's subordinated priority of payment and the sponsor's discretion to call/cancel/surrender the transaction should be taken into account for purposes of assessing whether the SPV will be able to fully fund its potential obligations to the undertaking. | CEIOPS would like to note that Solvency 2 will require changes from existing practice.<br><br>CEIOPS has amended its advice to reflect this feedback. |
| 93. | GDV | 3.26-3.31 | In order to amend the fully funded principle it should be considered | Noted. |

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| | | | to ensure that the duration of the debt issuance or other financing system is at least equivalent to the duration of the reinsurance contracts between the SPV and the insurance undertaking. | |
| 94. | L&G | 3.26(w)<br>3.84 (w)<br>3.27 (w) | **Fully Funded Concept**<br>The "fully funded" concept has changed quite significantly from the existing UK definition as it would now be assessed using a Solvency II basis. This is a particular concern for existing vehicles as there might be a step change in the level of required capital on adoption of Solvency II. In addition, we are not certain that the current wording would allow arrangements that effectively limit the value of the liabilities to be capped at the value of the assets even though section 3.84 seems to support this approach.<br>Section 3.27 indicates that the insurer setting up the SPV should run a series of stress and scenario tests in order to determine that the SPV is fully funded as part of the authorisation process. This seems to conflict with the idea that the SPV must be fully funded at all times. We would prefer the approach to be based on monitoring the position of the ceding company and ensuring that their overall exposure is suitably capitalised. | Solvency 2 is a new system but existing vehicles will be grandfathered – In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. CEIOPS expects SPV's established between now the implementation of Solvency 2 to take into account the likely requirements of the new regime when having a running time exceeding the entry into force of the Directive.<br>CEIOPS has agreed that the fully funded concept should relate to the risk transferred (aggregate limit) and not to the amount of the assets.<br>Agreed. Stress tests and scenario tests are not necessary because of the fully funded principle (for the SPV's obligations). Changes have been made here. Stress tests and scenario tests should demonstrate that future fees and expenses can be met out of future investment income. |

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| 95. | CEA | 3.27 | While initially requiring an economic balance sheet and subsequent determination of own funds, it seems CEIOPS is requiring a SPV to have more capital to fulfil the requirement of this paragraph since stress scenarios will lead to a higher requirement in fulfilling the fully funded principle. This requirement is too onerous and since SPV are permanently fully funded it should be deleted.<br>Indeed, the regular independent mark to market and minimum collateral ratings should provide sufficient comfort to avoid having stress tests.<br>Furthermore this requirement is not compliant with the treatment of other participations or subsidiaries. | See 94 |
| 96. | ESF | 3.27 | While initially requiring an economic balance sheet and subsequent determination of own funds, it seems CEIOPS is requiring a SPV to have more capital to fulfil the requirement of this paragraph since stress scenarios will lead to a higher requirement in fulfilling the fully funded principle. This requirement is too onerous and since SPVs are permanently fully funded it should be deleted.<br>Indeed, the regular independent mark to market and minimum collateral ratings should provide sufficient comfort to avoid having stress tests. | See 94 |
| 97. | FFSA | 3.27<br>3.50 | As indicated before, we think that in order to evidence and ensure that it is fully funded, the CP should emphasize the need for liquid investments. As long as the SPV can prove it is fully funded on a permanent basis, we deem that there is no need for stress and scenario tests documentation as required in the approval documentation (3.50) and mentioned in paragraph 3.27.<br>In 3.50, we propose to replace the sentence "a statement as to how the SPV is or will be fully funded, including stress and scenario tests run to determine if the fully funded concept has been met, where | See 94<br>The documentation requirement has been amended. |

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| | | | appropriate" by "a statement as to how the SPV is **continuously** fully funded" (and to remove the rest of the sentence), considering the mention of fully funded principle sufficient.<br><br>Indeed, the regular independent mark to market and minimum collateral ratings (and over-collateralization in certain cases) should provide sufficient comfort to avoid having stress tests. In addition, the pertinence of stress tests is too subjective and making an approval subject to receiving stress tests could seriously jeopardise the alternative risk transfer route.<br><br>If scenario and stress tests were considered indispensable, the main assumptions / methods should be defined, in order to facilitate the harmonization across the countries. | |
| 98. | Munich Re | 3.27 | On the liability side usually non-life transactions provide for a contractual coverage limit. To meet the fully funded criteria this maximum amount has to be covered by the SPV's assets. Therefore on the liability side the use of stress and scenario tests should only be applicable to SPVs accepting risks with no contractual limit in coverage (e.g. life transactions). | Agreed. Stress tests are not necessary. But CEIOPS does view contracts with no contractual limits in coverage as meeting the fully funded principle. Changes have been made here. Stress tests and scenario tests should demonstrate that future fees and expenses can be met out of future investment income. |
| 99. | Solvency II Legal Group | 3.27 | **Mandatory conditions to be included in all contracts issued: Principle 1 – Fully funded**<br><br>*CEIOPS advises: To assess the fully funded concept, the Insurer should run a number of stress and scenario tests, as appropriate, which should be discussed with the supervisory authority during the authorisation process.* | Agreed. Changes have been made here. Stress tests should demonstrate that future fees and expenses can be met out of future investment income. |

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| | | | The requirement for the SPV to be fully funded is embedded in its definition. It means that the SPV must always have assets that are equal to or greater than its aggregate maximum liability at any time, including any anticipated fees and expenses. To test whether an SPV meets this requirement, CEIOPS argues that a number of stress and scenario tests should be run, as discussed with the supervisor during the authorisation process. Further, the contract between the SPV and the Insurer must have clear aggregate limits and the SPV must be fully funded up to those limits.<br><br>In our view, a requirement for stress and scenario tests to be carried out at the level of the SPV introduces an unnecessary complication into the authorisation process and could limit significantly the use of SPVs in the insurance sector. A tailored regime for SPVs is intended to make the authorisation process relatively straightforward and, on the basis that the SPV is required to be "fully funded" at all times, limit additional financial scrutiny of the SPV by the relevant supervisory authority. At the same time, policyholder interests are safeguarded through ongoing supervision of the Insurer. If the SPV is required to carry out stress and scenario testing, our expectation is that an SPV or the sponsoring Insurer would ultimately be forced to establish a capital buffer to ensure that the SPV can satisfy the "fully funded" test in all scenarios, so removing one of the main benefits of using an SPV.<br><br>Therefore, whilst CEIOPS's proposal that stress and scenario testing should be carried out at the level of the SPV may be one approach to ensuring that an SPV is fully funded, we believe that an alternative approach, which is contained in the current UK regime, is equally effective. This requires the contract between the SPV and the Insurer to limit the SPV's aggregate maximum liability *at any time* to an amount that does not exceed the value of its assets *at that time*. This means that the SPV's liability to the Insurer can never exceed its | CEIOPS has agreed that the fully funded concept should relate to the risk transferred (aggregate limit) and not to the amount of the assets. The liabilities need to be fully funded. |

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| | | | assets and any risk that amounts recoverable from the SPV fall short of amounts needed to pay claims remains with the Insurer and must be taken into account in the Insurer's own stress and scenario testing. Policyholder interests continue to be safeguarded through ongoing supervision of the Insurer and the introduction of further stress and scenario testing at the SPV level becomes unnecessary.<br><br>We strongly believe that CEIOPS's advice should recognise this alternative approach to the assessment of whether an SPV is fully funded. | CEIOPS does not view contracts with no contractual limits in coverage as able to meet the fully funded principle. |
| 100. | Ireland Solvency 2 group | 3.28 | This paragraph states that the SPV must be fully funded up to a clearly stated aggregate limit in the reinsurance contract between the SPV and the cedant and states that a contract without an aggregate limit could not satisfy the fully funded requirement. This is contrary to current practice, particularly in relation to life assurance securitisations, such as embedded value securitisations or „Triple XXX" reserve securitisations where contracts do not have aggregate limits. A requirement for a contract to state an aggregate limit in all cases may therefore be unworkable and may prevent life SPRVs from being established in EU domiciles. This would put the EU at a competitive disadvantage vis-a-vis other jurisdictions. | CEIOPS agrees that contracts with no contractual limits in coverage are unable to meet the fully funded principle.<br><br>If there is no aggregate limit then the liabilities can not be fully funded – the liabilities should then be subject to capital requiremnents. |
| 101. | CEA | 3.29 | The use of an SPV will only transfer the risk faced by an (re-) insurer. The obligations towards the policyholder remains. A policyholder is always able to present its claim against the (re-)insurer. Whether the SPV is effective in reducing the risks is subject to the ORSA and should meet the considerations and requirements as presented by the other advice presented by CEIOPS.<br><br>The risk of ineffective risk transfer should be assessed in Pillar II equally as applied for banking securitisations (e.g. The risks arising from securitisation transactions in relation to which the credit institutions are originator or sponsor shall be evaluated and | CEIOPS expects the undertakings to assess the risks of an ineffective risk transfer in their ORSA -> see 3.70 of CP36. |

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| | | | addressed through appropriate policies and procedures, to ensure in particular that the economic substance of the transaction is fully reflected in the risk assessment and management decisions. CRD Annex V 6). | |
| 102. | ESF | 3.29 | The use of a SPV will only transfer the risk faced by an (re-)insurer. The obligations towards the policyholder remains. A policyholder is always able to present its claim against the (re-)insurer. Whether the SPV is effective in reducing the risks is subject to the ORSA and should meet the considerations and requirements as presented by the other advice presented by CEIOPS.<br><br>The risk of ineffective risk transfer should be assessed in Pillar II equally as applied for banking securitisations (e.g. the risks arising from securitisation transactions in relation to which the credit institutions are originator or sponsor shall be evaluated and addressed through appropriate policies and procedures, to ensure in particular that the economic substance of the transaction is fully reflected in the risk assessment and management decisions. CRD Annex V 6). | See 101 |
| 103. | CEA | 3.30 | It is important to recognize the funding of claims and reserves by future premiums. | CEIOPS has considered this and made some changes |
| 104. | ESF | 3.30 | It is important to recognise the funding of claims and reserves by future premiums receipts | See 103 |
| 105. | IUA | Section 3.3 | We broadly agree with the eight principles outlined for an SPV to seek authorisation. | Noted. |
| 106. | CEA | 3.31 | The supervisors' conclusions of SPVs being fully or partially funded need to be harmonized across Member States for similar SPV situations.<br><br>In case the review proves unsatisfactory there should be a cure period. The regulatory benefit should be reassessed in case the | Noted.<br><br>A breach of the fully funded principle may lead to a withdrawal of the SPV's authorisation. However, this may not be |

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| | | | problem is not cured (but not necessarily fully cancelled).<br>The CEA also proposes this paragraph to be expanded as follows: 'In assessing the fully funded requirement the impact on collateral of protection mechanisms such as Total Return Swaps should be assessed'. | immediate and the process should be proportionate – if it is not fully funded it would not gain authorisation. Supervisors should consider all factors, including the impact on collateral of protection mechanisms, but CEIOPS does not wish to list all these factors as this is a principle applicable to all SPVs. |
| 107. | CEA | 3.31 | If an SPV is fully independent from the undertaking then this requirement potentially cannot be enforced. If the SPV has economic ties than any deficiencies would normally already be included in the assessment of the undertaking. | CEIOPS does not consider this a problem. The SPV needs to be fully funded. |
| 108. | CEA | 3.31 | We would expect that the measures taken by any relevant regulator with respect to an SPV no longer maintaining its fully funded status would be proportionate to the circumstances and amount by which the SPV become less than fully funded.<br>We consider that an "escalation" process could be introduced, with a defined letter from the supervisor, a precise period for the SPV / Undertaking to provide with a response, and deadline for the SPV or undertaking to find a solution to repair the breach. | Agreed. A breach of the fully funded principle may lead to a withdrawal of the SPV's authorisation. However, this may not be immediate and the process should be proportionate.<br>Setting time limits, response time etc. is all part of due process and is not specified here. |
| 109. | ESF | 3.31 | If a SPV is fully independent from the undertaking then this requirement potentially cannot be enforced. If the SPV has economic ties then any deficiencies would normally already be included in the assessment of the undertaking.<br>Also see comment to para 3.84. | See 107 |
| 110. | ESF | 3.31 | The ESF proposes this paragraph to be expanded as follows: | Supervisors should consider all |

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| | | | *["In assessing the fully funded requirement the impact on collateral of protection mechanisms, such as Total Return Swaps, interest rate swaps and currency swaps, should be assessed".]*<br><br>Furthermore, consistent with comments relating to the principles of fully funding, we propose the third sentence be modified as follows:<br><br>*["It is envisaged that at no period in time would its assets be insufficient to meet its liabilities to the undertaking as they fall due."]* | factors, including the impact on collateral of protection mechanisms, but CEIOPS does not wish to list all these factors as this is a principle.<br><br>Agreed. |
| 111. | ESF | 3.31 | We would expect that the measures taken by any relevant regulator with respect to a SPV no longer maintaining its fully funded status would be proportionate to the circumstances and amount by which the SPV become less than fully funded.<br><br>We consider that an "escalation" process could be introduced, with a defined letter from the supervisor, a precise period for the SPV / Undertaking to provide with a response, and deadline for the SPV or undertaking to find a solution to repair the breach. | See 108 |
| 112. | FFSA | 3.31 | The fully funded concept, which is at the center of the ISPV definition, is too vague. At present, EU regulators do not have a coordinated understanding of what this concept means. In the course of a discussion. The IFSRA, for example, mentioned they would not object to ISPVs financed on a contingent basis as a matter of principle, assuming that this is acceptable to the cedent's supervisor. In that case, the ceding companies regulator (the ACAM) did not rule out this financing arrangement - an unfunded swap - as a matter of principle. The FSA, on the contrary, requires ISPV to be funded with cash or cash equivalent assets. It should be clearly stated what fully funded entails. The requirements should be different for bilateral transactions compared to publicly placed ones. For instance in the case of bilateral transactions unfunded collateral arrangements should suffice (as it is the case for traditional reinsurance) | CEIOPS considers that financing the SPV on a contingent basis through for example a standby facility or letter of credit should not be allowed.<br><br>CEIOPS does not see the necessity for differentiation based on type of investor. Policyholder protection is relevant for both.<br><br>Monitoring is up to the relevant parties; frequency depends on the necessity of the information for an adequate risk management and this |

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| | | | It could be useful to add the frequency of the monitoring of the collateral structure (e.g. periodic reporting according to industry best practice), the basis of the valuation (mark to market, book value...) and by whom this valuation should be done to be satisfactory.<br><br>In case the review proves unsatisfactory there should be a cure period.<br><br>The regulatory benefit should be reassessed in case the problem is not cured (but not necessarily fully cancelled). | differs from undertaking to undertaking.<br><br>A breach of the fully funded principle may lead to a withdrawal of the SPV's authorisation. However, this may not be immediate and the process should be proportionate. |
| 113. | Ireland Solvency 2 Group | 3.31 | This paragraph states that the fully funded requirement cannot be satisfied by contingent future receipts – thus for example a SPV transaction could not be undertaken where investors undertook to pay up amounts on their notes in future (as would be the case in a private equity fund), even where those undertakings were secured by LOCs provided by the investors. We see no reason why contingent future receipts should not be acceptable as funding for a SPV in circumstances where those future receipts are adequately secured. | CEIOPS has revised its advice here.<br><br>CEIOPS considers that financing the SPV on a contingent basis through for example a standby facility or letter of credit should not be allowed. |
| 114. | IUA | 3.31<br>3.49<br>3.22 | We support the fully-funded principle in the interests of ensuring security to the ceding parties and minimising prudential risk to policyholders. However, clarification on the consequences of "underfunding" (where the value of assets falls below the value of potential reinsurance recoveries and aggregate liabilities) might be useful. Paragraph 3.49 notes that the breach of any of the principles "could include withdrawing of authorisation of the SPV". We would interpret this as meaning the SPV supervisor will have options other than withdrawal of authorisation available to them; would this imply, for example, that an injection of capital from investors would be permissible, subject to approval from the supervisor, so that it can retain its status as a full-funded entity? Such capital raising is alluded to in Para 3.14, so clarification would be useful. | A breach of the fully funded principle may lead to a withdrawal of the SPV's authorisation. However, this may not be immediate and the process should be proportionate and will take into account actions taken to restore compliance with the principle.<br><br>Noted. In future CEIOPS may |

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| | | | We feel that further clarity would also be useful, to ensure a harmonised and proportionate application of the principles across all supervisors. Harmonisation may not be achieved if some supervisors interpret a breach of the fully funded principle as resulting in an automatic withdrawal of authorisation of the SPV, whereas others would be willing to consider remedial actions.<br>This is not an appeal for inflexible rules or form over substance.<br>Regarding securitisation and SPVs, effective but efficient and flexible procedures are required to ensure that this valuable diversification of funding arrangements continues to be available and continues to develop within the EU. | develop Level 3 guidance when it feels necessary to achieve the adequate level of harmonisation. |
| 115. | KPMG | 3.31 | We agree with footnote 18, that financing of the SPV on a contingent basis does not meet the fully funded requirement | Noted. |
| 116. | CEA | 3.32 | The subordination should be subject to the requirements in the directive. No additional requirement should be applicable as an SPV should not be subject to even more rigorous restrictions. | Noted. |
| 117. | CEA | 3.32 | It is possible that potential claim payments under the reinsurance contract are not definitely sure when the debts or other financing methods are due for repayment to the investors. The implementing measures should provide a regulation (for instance deadlines and proceedings in order to decide whether or not claim liabilities do exist) for such cases. | Unless agreed at authorisation, only at the expiration of the SPV's reinsurance cover and when there are no further reinsurance (or 'reinsurance-like') liabilities under the contracts, can any surplus outstanding after the SPV's reinsurance obligations have been satisfied be returned to capital providers. |
| 118. | CEA | 3.32 | In casualty deals, the aggregate limit is reduced over time, in line with the amortization of the notes. The implementing measures should provide a regulation for such cases. | CEIOPS believes that this should be assessed at authorisation. |

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| 119. | CEA | 3.32 | While we agree with the subordination principle, we are concerned that legally it may not be so much a question of subordination but rather recourse which is limited and defined by reference to available funds and a clear priority of payments. CEIOPS should check if replacing the references to subordination accordingly would remove such a potential legal debate. | Noted – CEIOPS considers subordination and recourse to be different principles. |
| 120. | ESF | 3.32 | The subordination should be subject to the requirements in the directive. No additional requirement should be applicable as a SPV should not be subject to even more rigorous restrictions. | Noted. |
| 121. | ESF | 3.32 | In casualty deals, the aggregate limit is reduced over time, in line with the amortization of the notes. The implementing measures should recognise such cases. | CEIOPS believes that this should be assessed at authorisation. |
| 122. | ESF | 3.32 | While we agree with the subordination principle, we are concerned that legally it may not be so much a question of subordination but rather recourse which is limited and defined by reference to available funds and a clear priority of payments. CEIOPS should check if replacing the references to subordination accordingly would remove such a potential legal debate. | See 119 |
| 123. | FFSA | 3.32 & 3.44 | The CP currently states that "the investors shall have a subordinated claim on the SPV's assets" since the assets of the SPV must first be available to meet its obligations under the reinsurance agreement. While we agree with this we are concerned that legally it is not so much a question of subordination but rather recourse which is limited and defined by reference to available funds and a clear priority of payments. We would thus recommend replacing the references to subordination accordingly.<br><br>Similarly, §3.44 states that the investor shall have no recourse to the cedent, which is correct. However, it would be preferable to also clarify that the rights /obligations of the cedent are limited to its | CEIOPS disagrees and views this as an important principle.<br><br>The focus of this paper does not include the consideration of protection of the interest in |

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| | | | rights arising out the reinsurance/ceding agreement and that it has no direct recourse to the investors. | investors in SPV's |
| 124. | GDV | 3.32 | It is possible that potential claim payments under the reinsurance contract are not definitely sure when the debts or other financing methods are due for repayment to the investors. The implementing measures should provide a regulation (for instance deadlines and proceedings in order to decide whether or not claim liabilities do exist) for such cases. | See 117 |
| 125. | IUA | 3.32 | Whilst we recognise the need for investors to have a subordinated claim on a SPV's assets, we note that the only circumstances where repayments to investors are permitted, are where such repayments are agreed at authorisation. There may be a significant period of time before all of the SPV's further reinsurance liabilities have expired. We would be interested to know whether there might be any exceptions to this in the event a SPV could be demonstrated to be significantly overfunded.<br><br>We would query whether CEIOPS considers there to be any place for a potential mechanism where such a surplus could be extracted from an SPV, providing the SPV remains fully-funded. For example, if an SPV has a mixture of long-tail and short-tail reinsurance liabilities, and the short-tail liabilities ultimately extinguish at a level below what was allowed for when the SPV was funded, would it be appropriate, possibly with the approval of the supervisor, for that surplus to be extracted before the expiration of all the SPV's remaining liabilities. The SPV would of course still remain subject to the fully funded principle throughout. | This is covered in Para. 3.32 of CP36 already. It depends on what was agreed upon on authorisation. |
| 126. | L&G | 3.32(w) | **Repayment to Investors**<br><br>This paragraph appears to make the default situation that investors | This is covered in Para. 3.32 of CP36 already. It depends on what was agreed upon on authorisation. |

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| | | | can only receive distributions from the SPV when all the liabilities are extinguished. Given the long term nature of life assurance liabilities, it would be preferable to set up the regime so that earlier payments are expected. | |
| 127. | Solvency II Legal Group | 3.32 | **Mandatory conditions to be included in all contracts issued: Principle 2 – Investors have a subordinated claim on SPV assets**<br><br>*CEIOPS advises: The assets of the SPV must be available to first meet its reinsurance (or 'reinsurance-like') obligations to the Insurer. … Unless agreed at authorisation, only at the expiration of the SPV's reinsurance cover and when there are no further reinsurance (or 'reinsurance-like') liabilities under the contracts, can any surplus outstanding after the SPV's reinsurance obligations have been satisfied be returned to capital providers. The allowance for repayments prior to this should be explained to the supervisory authority and agreed at authorisation, along with an estimation of the expected repayments to be made over the lifetime of the SPV.*<br><br>Depending on the objective behind establishment of a particular SPV, we think it would be unusual for Investors to agree that they should only be repaid after reinsurance liabilities to the Insurer have been discharged in full and we are concerned that this should be the assumption (i.e. the default position) under Principle 2. For example, securitisations have been effected in the UK life insurance sector on the basis that repayments of Investors occur from time to time as the reinsurance obligations reduce without giving rise to concerns about whether policyholder interests are adequately safeguarded. We believe that further consideration should be given by CEIOPS to whether structures that provide for repayment of Investors earlier than is currently envisaged under Principle 2 may be appropriate and that CEIOPS's advice be amended accordingly. | 3.32 sentence 4 it depends on what was agreed upon on authorization. |

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| | | | Whilst Principle 2 does allow supervisory authorities to agree to repayment of Investors on a periodic or other early basis, a narrow interpretation may mean that Member State regulators are reluctant to exercise this power and, other than in very limited cases, require structures to provide only for repayment of Investors once all liabilities to the Insurer have been met. The guidance should be amended to address the circumstances in which supervisors can, and should, accept structures that provide for earlier repayment of Investors (e.g. as have previously been accepted in the UK). Without such guidance, there is a risk of Member States taking different approaches to this requirement, undermining the objective of bringing greater harmonisation to SPV regimes. | |
| 128. | CEA | 3.34 | It is reasonable that the investment strategy should reflect the duration of the underlying liabilities arising from the reinsurance contracts but in practice several limitations might arise when applying this principle.<br>For some risks, "duration matching" needs careful judgment since it could severely drive up the cost of the collateral arrangement.<br>The focus thus could move on liquidity and the other "protections" of the collateral structure (daily or weekly third party mark to market, constraints on the quality of the collateral and over collateralization could provide sufficient comfort to include longer dated paper).<br>This paragraph also demands that the term of the SPV contract should not exceed the term of the liabilities of the undertaking. This provision is not related to the realization of the "prudent person investment principle" set forth in 3.33 and should be abandoned since there might be good reasons to extend the duration of the SPV contract. | Liquidity risk was already mentioned in the CP. CEIOPS has kept this reference in 3.46. CEIOPS has made some changes to the paper. |

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| 129. | CEA | 3.34 | It's potentially better to refer under this paragraph to the broader concept of "collateral structure". The collateral structures can benefit from various layers of protection (TRS for instance, or in some cases Government guaranteed notes) and should be analyzed as a whole. Consequently, one should consider the notion of "impairment" of the collateral structure vis-a-vis potential liabilities. | CEIOPS disagree. Liabilities need to be covered by assets not collateral structure. |
| 130. | ESF | 3.34 | It is reasonable that the investment strategy should reflect the duration of the underlying liabilities arising from the reinsurance contracts.<br>But 3.34 also demands that the term of the reinsurance contract should not exceed the term of the liabilities of the undertaking. This provision is not related to the realisation of the "prudent person investment principle" set forth in 3.33 and should be abandoned since there might be good reasons to extend the duration of the reinsurance contract. | Agreed<br>CEIOPS has made some changes to the paper. |
| 131. | ESF | 3.34 | It's potentially better to refer under this paragraph to the broader concept of "collateral structure". The collateral structures can benefit from various layers of protection (TRS for instance, or in some cases Government guaranteed notes) and should be analyzed as a whole. Consequently, one should consider the notion of "impairment" of the collateral structure *vis-a-vis* potential liabilities. | See 129 |
| 132. | FFSA | 3.34 | In order to adhere to the "prudent person" investment principle, the CP reminds that "assets should reflect the duration of underlying liabilities".<br>We deem that there could a contradiction between the maturity feature (assets duration matching exposure period) and the fully funding principle (3.26), which requires a value level of assets "at any time".<br>We propose that the concept of "liquidity" should prevail over | Noted<br>CEIOPS does not see this as a contradiction – there needs to be a fully funded amount of assets that are also matched.<br>See 128 |

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| | | | "duration".<br>It is to be noted that for risks such as parametric cat, "duration matching" would mean that the collateral would have a maximum maturity of 3 months (as payout usually occurs within that timeframe following a cat event) which would severely drive up the cost of the collateral arrangement. The focus should be on liquidity and the other "protections" of the collateral structure (daily or weekly third party mark to market, constraints on the quality of the collateral and over collateralization could provide sufficient comfort to include longer dated paper) see below | |
| 133. | FFSA | 3.34 | The use of the word "assets" is too restrictive and should therefore be replaced by the broader concept of "collateral structure". The collateral structures can benefit from various layers of protection (TRS for instance, or in some cases Government guaranteed notes) and should be analysed as a whole. One should consider the notion of "impairment" of the collateral structure vis a vis potential liabilities.<br>In the §3.34, it is underlined that "assets and liabilities are cashflow matched". We would like to clarify what this entails because we remind that the cashflows generated by the investment in collateral will not suffice to pay the coupon part of which is paid by the cedent premium<br>We suggest that the definition of asset shall include the receivables toward the undertaking. | See 129<br>CEIOPS has made some changes to the paper.<br>CEIOPS is not proposing a definition of assets (or collateral structure) |
| 134. | GDV | 3.34 | It is reasonable that the investment strategy should reflect the duration of the underlying liabilities arising from the reinsurance contracts. But 3.34 also demands that the term of the reinsurance contract should not exceed the term of the liabilities of the undertaking. This provision is not related to the realization of the | See 128 |

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| | | | "prudent person investment principle" set forth in 3.33. and should be abandoned since there might be good reasons to extend the duration of the reinsurance contract. | |
| 135. | CEA | 3.35 – 3.37 | It would be contradictory to demand from SPVs to invest in "certain" investment assets (possibly precisely defined or linked to particular quantitative thresholds), while article 130 of the framework directive states that (re-)insurance undertakings may invest assets and instruments, which comply with the prudent person principle. Thus, similar to (re)-insurance undertakings SPVs should be allowed to invest in those assets and instruments whose risks they can properly identify, measure, monitor, manage control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with Article 44(1)(a). | This section is CEIOPS' interpretation of the prudent person principles specifically for SPVs – 'best interests of the policyholder' |
| 136. | ESF | 3.35-3.37 | We believe the "prudent person" principles are sufficient and do not require additional levels of detail. | See 135 |
| 137. | FFSA | 3.35 – 3.37 | The "prudent person" principle relating to the assets does not provide quantitative information on what high quality assets represent, and what a sufficient degree of diversification means.<br>This limited level of detail implies that the local supervisor does not have a precise guidance to follow, and could jeopardise the principle of harmonization over the countries.<br>The concept of diversification should define the level of acceptable exposures to third parties. On the asset side it would be useful to state acceptable concentration limits but leave flexibility for case by case assessment by the regulator if the assets do not fit the given criteria. Concentration limits should not apply for instance to all government bonds (Blue Fin II transaction with bespoke KfW as only collateral).<br>An example of guidelines would be: | CEIOPS does not propose to define these in detail as they may vary in nature depending on the underlying transaction. Defining these goes against the prudent person principle where in the CP CEIOPS has set out its views here for SPVs. |

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| | | | - no limit for maximum investments in [AA] rating with daily mark to market;<br>- for investment in rating less than [AA], concentration limit of [10%] per investment;<br>Assets matching the given criteria should be accepted as such. Other assets could be included subject to approval by the SPV supervisor.<br>These guidelines should be refined at a later stage. | |
| 138. | GDV | 3.35 – 3.37 | ~~The "prudent person" principle relating to the assets does not provide quantitative information on what high quality assets represent, and what a sufficient degree of diversification means.~~<br>~~This limited level of detail implies that the local supervisor does not have a precise guidance to follow, and could jeopardise the principle of harmonization over the countries.~~<br>It would be contradictory to demand from SPVs to invest in "certain" investment assets (possibly precisely defined or linked to particular quantitative thresholds), while article 130 of the framework directive states that (re-)insurance undertakings may invest assets and instruments, which comply with the prudent person principle. Thus, similar to (re)-insurance undertakings SPVs should be allowed to invest in those assets and instruments whose risks they can properly identify, measure, monitor, manage control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with Article 44(1)(a). | See 135 |
| 139. | CEA | 3.39-3.42 | The CP states that a SPV is authorized when the payment obligations are dependent upon a pre-defined loss suffered by the undertaking. It also indicates that there can be capital relief based on effective transfer of insurance risk. The supervisor of the SPV shall determine whether there is an effective risk transfer. | CEIOPS agrees that it is the supervisor of the SPV who authorises the SPV therefore the undertaking has to determine |

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| | | | Due to the multitude of situations we believe it is difficult to give a clear definition of effective risk transfer. The onus would be on undertakings to demonstrate an effective risk transfer. | effective risk transfer. |
| 140. | CEA | 3.39-3.45 | It is stated that the SPV has to be a bankruptcy remote vehicle, with a related legal opinion thereon (§3.45). As it currently is the case for some instruments in some markets, it would be preferable in particular to state that once the insurance risk is transferred effectively, it cannot be challenged by an administrator following the insolvency of the cedant so that there cannot be any claw back of, for example, collateral. | CEIOPS has removed this principle from the paper and added some relevant points to SPVs established by more than one undertaking. |
| 141. | ESF | 3.39-3.40 | The CP states that a SPV is authorised when the payment obligations are dependent upon a pre-defined loss suffered by the undertaking. It also indicates that there can be capital relief based on effective transfer of insurance risk. The supervisor of the undertaking shall determine whether there is an effective risk transfer and the amount of credit to be taken by the undertaking.<br>We believe principles pertaining to "effective risk transfer" would be difficult to clearly define for all facts and circumstances, and recommend it be reinforced wherever appropriate that:<br>1) the onus be on the undertaking to evidence effective risk transfer to the SPV;<br>2) discretion be given to the undertaking's regulator in determining the amount of credit allowed for the risk transfer; and<br>3) cooperation and communication between regulators of the SPV and undertaking be focussed on ensuring the SPV is fully funded with regard to the benefit permitted to the undertaking by the undertaking's regulator. | See 139 |

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| | | | Therefore, we propose that Para 3.39-3.41 should be amended accordingly, so that the responsibilities of the regulator of the SPV are limited to ensuring the SPV is fully funded with regard to the benefit permitted to the undertaking by the undertaking's regulator. | |
| 142. | FFSA | 3.39 – 3.45 | The CP states that a SPV is authorized when the payment obligations are dependent upon a pre-defined loss suffered by the undertaking. It also indicates that there can be capital relief based on effective transfer of insurance risk. The supervisor of the SPV shall determine whether there is an effective risk transfer.<br><br>The CP does not give any clear definition of effective risk transfer, neither did the reinsurance directive. In order to have an homogeneous treatment over the countries, and to reduce the judgmental area of the supervisor, we recommend that the CP give guidance on how to assess the level of transfer of risks, and which feature of the transactions be monitored.<br><br>Also, it is stated that the SPV has to be a bankruptcy remote vehicle, with a related legal opinion thereon (§3.45). As it currently is the case for French FCTs, it would be preferable if such bankruptcy remoteness is set out in the law itself as this would prevent all ambiguity. In particular, it would be preferable to state that once the insurance risk is transferred effectively, it cannot be challenged by an administrator following the insolvency of the cedent so that there cannot be any claw back of for example collateral. It would be preferable to state that the obligations between the cedent and the SPV fall within the scope of the Financial Collateral Directive to allow close out netting notwithstanding the insolvency of the cedent. | See 139<br><br>See 139<br><br>CEIOPS has included something in Level 2 text so this will depend on how it is written into law.<br><br>See 140 |
| 143. | IUA | 3.39-3.40 | The CP states that a SPV is authorised when the payment obligations are dependent upon a pre-defined loss suffered by the undertaking. It also indicates that there can be capital relief based on effective transfer of insurance risk. The supervisor of the SPV undertaking | See 139 |

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| | | | shall determine whether there is an effective risk transfer and the amount of credit to be taken by the undertaking.<br><br>We believe principles pertaining to "effective risk transfer" would be difficult to clearly define for all facts and circumstances, and recommend it be reinforced wherever appropriate that:<br><br>1) the onus be on the undertaking to evidence effective risk transfer to the SPV,<br><br>2) discretion be given to the undertaking's regulator in determining the amount of credit allowed for the risk transfer, and<br><br>3) cooperation and communication between regulators of the SPV and undertaking be focussed on ensuring the SPV is fully funded with regard to the benefit permitted to the undertaking by the undertaking's regulator.<br><br>Therefore, we propose that Para 3.39-3.41 should be amended accordingly. | |
| 144. | KPMG | 3.40 | The transfer of risk to a SPV is a significant transaction for a (re)insurance undertaking, so we would expect such a decision to have been approved and documented at Board level of the ceding (re)insurance undertaking. | Agreed |
| 145. | CEA | 3.41 | We agree with the principles that the SPV's payment to the undertaking must be dependent on the undertaking suffering a loss. Transactions which pay out regardless of whether a loss has been incurred do not require an insurance SPV and, thus, are outside the scope of this CP. In this context we find the use of "parametric triggers" to introduce unnecessary confusion | CEIOPS has tried to clarify this without limiting the scope of SPVs covered by the paper further. |
| 146. | ESF | 3.41 | We agree with the principles that the SPV's payment to the undertaking must be dependent on the undertaking suffering a loss. | See 145 |

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| | | | Transactions which pay out regardless of whether a loss has been incurred do not require an insurance SPV and, thus, are outside the scope of this CP.<br><br>To this point, the reference to "reinsurance-like" payments and "parametric triggers" introduce unnecessary confusion as to the scope of this CP and should be removed. | |
| 147. | Ireland Solvency 2 Group | 3.41 | This paragraph states that the nature of the risk triggers (i.e. parametric or indemnity) "may or may not be relevant" in assessing whether the arrangement has secured effective risk transfer from the ceding undertaking. For clarity, under Irish (and as we understand it English) law, only an indemnity-based contract would be regarded as a reinsurance contract so as to require the establishment of an authorised SPRV. | See 145 |
| 148. | KPMG | 3.42 | We agree that there should be no double count of regulatory capital relief. We would expect the (re)insurance undertaking to clearly document how it has ensured this and for this to form part of the supervisory review process. | Agreed |
| 149. | CEA | 3.43 | This paragraph underlines that "the undertaking cannot use an internal SPV to achieve a regulatory capital reduction at group level". An SPV could be considered "internal" when an element of finance is not raised externally but the consultation paper could give more detail on when to consider a SPV internal or external (level of capital, investment in debt…). The "intragroup" analysis could be based on SIC 12 guidance under IFRS.<br><br>Further, this section states that if the SPV is internal, "the undertaking would not obtain any group regulatory capital relief".<br><br>Later, the alignment of interests between the insurance undertaking and the SPV, defined in section 3.87, requires that undertaking retains some of the risk reinsured in order to make the investment | CEIOPS proposes to leave this to a case-by-case assessment – if no element of finance is raised externally to the group then it is considered intra-group.<br><br>Wording here amended for clarity – an element of external finance is needed for a capital reduction. CEIOPS has provided some new material in this area and created a |

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| | | | more attractive and confident.<br>The CEA asks the CP to be more precise on how the two requirements can be fulfilled simultaneously.<br>Finally, it should be made clear if the sentence "where an element of finance is not raised externally" should be replaced or not by "where no element of finance is raised externally". | new section.<br>Agreed |
| 150. | CEA | 3.43 | Even if the SPV is externally funded by the capital markets, guarantee declarations or other comparable arrangements provided by intra-group subsidiaries might lead to intra-group reinsurance not being acceptable for regulatory capital relief. The implementation measures should address also whether such transactions might already realize an effective risk transfer to the SPV. | CEIOPS has added some further material here- greater detail to be provided at Level 3 or decided at authorisation. |
| 151. | ESF | 3.43 | This paragraph underlines that "the undertaking cannot use an internal SPV to achieve a regulatory capital reduction at group level". A SPV could be considered "internal" when an element of finance is not raised externally, but the CP could give more detail on when to consider a SPV internal or external (level of capital, investment in debt…). The "intra-group" analysis could be based on SIC 12 guidance under IFRS.<br>In 3.87 the alignment of interests between the insurance undertaking and the SPV is addressed. This conflicts with 3.84. | See 149<br>CEIOPS does not consider that this conflicts. |
| 152. | ESF | 3.43 | It appears that even if the SPV is externally funded by the capital markets, guarantee declarations or other comparable arrangements provided by intra-group subsidiaries might lead to intra-group reinsurance not being acceptable for regulatory capital relief. The implementation measures should address the effective risk transfer achieved by such arrangements. | See 150 |

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| 153. | FFSA | 3.43 | §3.43 underlines that "the undertaking cannot use an internal SPV to achieve a regulatory capital reduction at group level". An SPV is "internal" when an element of finance is not raised externally. Furthermore, this section states that if the SPV is internal, "the undertaking would not obtain any group regulatory capital relief".<br><br>In the meantime, the alignment of interests principle between the insurance undertaking and the SPV, defined in section 3.87, requires that undertaking retains some of the risk reinsured in order to make the investment more attractive and confident.<br><br>Thus, we consider that the CP could set a minimum threshold of retained investment for automatic approval. If the retained investment is below this threshold, the supervisor shall analyse the approval on a case-by-case basis.<br><br>The consultation paper could give more detail on when to consider a SPV internal or external (level of capital, investment in debt…). The "intragroup" analysis could be based on SIC 12 guidance under IFRS.<br><br>Furthermore, we consider that the undertaking could obtain some relief, based on the external share in the SPV (as indicated in the Reinsurance Directive).<br><br>Finally, the sentence "where an element of finance is not raised externally" should be replaced by "where no element of finance is raised externally". | CEIOPS has added some new material here and does not propose to develop this further as this should be assessed as part of the authorisation.<br><br>Agreed |
| 154. | GDV | 3.43 | Even if the SPV is externally funded by the capital markets guarantee declarations or other comparable arrangements provided by intra-group subsidiaries might lead to intra-group reinsurance not acceptable for regulatory capital relief. Though such transactions might already affect an effective risk transfer to the SPV the implementation measures should address this issue. | See 150 |

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| 155. | KPMG | 3.43 | We agree that SPVs internal to a group should not be used to obtain capital benefit for the group where no external funding is obtained. However, the paper could make it clearer that credit can still be taken in relation to a (re)insurance undertaking's solo capital position. | CEIOPS has added some new material here to address this point. |
| 156. | PWC LLP | 3.43 | In some territories SPVs established under the Reinsurance Directive have been used for intra group reinsurance without the external raising of finance or transfer of risk. The stated position at paragraph 3.43 that the undertaking "cannot use an internal SPV … to achieve a regulatory capital reduction at group level" is clear. However, it is less clear whether an internal SPV can be used to achieve a regulatory capital reduction at the level of the ceding insurer where finance is provided from elsewhere in the group.<br><br>Paragraph 3.43 notes that "The fact that an SPV is internal is not in itself sufficient justification for a supervisory authority to disallow it, it would not however be authorised". It is unclear what the status would be of an internal SPV that was not disallowed but was not authorised. The position of such SPVs should be clarified and in particular, it should be clarified whether internal SPVs may be used to achieve a regulatory capital reduction at the level of the ceding insurer. | See 155<br><br>CEIOPS considers that if the SPV is disallowed it would not have any regulatory capital effect. |
| 157. | CEA | 3.44 | It would potentially be clearer to also state that the rights/obligations of the cedant are limited to its rights arising out the reinsurance/ceding agreement and that it has no direct recourse to the investors. | Agreed |
| 158. | L&G | 3.45(w) | **Bankruptcy Remote**<br><br>This section introduces the requirement for the SPV to be bankruptcy remote. It appears to be set up to protect the SPV from the | CEIOPS has removed this principle from the advice. |

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| | | | bankruptcy of the ceding firm. We are concerned that such a requirement might prevent actions that could be taken for the benefit policyholders in the ceding insurer and feel that such requirements should be left for the ceding company to agree with investors. | |
| 159. | Solvency II Legal Group | 3.45 | **Mandatory conditions to be included in all contracts issued: Principle 7 – Bankruptcy remote vehicle**<br>*CEIOPS advises: The SPV should be segregated into a bankruptcy remote vehicle separate from the Insurer. In the event of the bankruptcy of the Insurer no claim would arise on the SPV except in the case of a pre-defined event as defined in the terms of the contract with the SPV.*<br>Our understanding is that the purpose of establishing a bankruptcy remote vehicle on a securitisation is to secure that, if the Insurer becomes insolvent, there is no claim on the SPV except to the extent provided for in its contract with the Insurer. This is a commercial matter for the Investors, and if applicable the ratings agencies, and we are not sure why it should concern the regulator or form part of the SPV's authorisation requirements. Whilst the protection of investors undoubtedly can justify the exercise of European powers, we do not believe that it is an objective falling within the remit of Solvency II – see, notably, Recital (2) of the Framework Directive. We strongly believe, therefore, that there is no place for Principle 7 in the Level 2 Measures. | See 158 |
| 160. | CEA | 3.46 | Under this consultation paper, we understand that the authorization of establishment of the SPV by the supervisory authority is planned and determined after that all documentation has been submitted. The process of creation of a SPV is time-consuming and can lead to significant expenses (legal, banks…). | CEIOPS does not agree to formalise this process however this could take place as regular supervisory dialogue.<br>Authorisation should be given on a |

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| | | | In order to be more efficient, the CEA proposes introducing in the process:<br>• a pre-approbation form from the authority, including a minimum required level of documentation to get a first feedback. This would lead to a non-binding position that would allow the undertakings to clearly understand what the expectations are.<br>a timeline for the supervisor to pre-approve or approve the SPV establishment. For example, once the pre-approval or approval required documentation is provided, the supervisor could have a 1-month period to give its opinion on the operation, following a given form which would be homogeneous over the countries. | case-by-case basis in line with Article 25 – this has been added to the paper. |
| 161. | ESF | 3.46 | We support the flexibility provided for in the existing drafting with respect to the extent and scope of documents to be submitted to the SPV regulator as part of the authorisation process. | Noted |
| 162. | FFSA | 3.46 | We understand that the authorization of establishment by the supervisory authority is planned and determined after that all documentation has been gathered and submitted.<br>As indicated in our general comments, to help the undertaking to follow an efficient and time and expense saving process, we suggest to introduce in the process a pre-approval (but non binding) step from authority, based on a limited minimum required information (e.g. strategy, exposure, covered business, way of functioning) and a time limit to provide with the pre-approval and final authorization (e.g. 1 month starting on the date when minimum required documentation has been received). | See 160 |
| 163. | CEA | 3.47 | We consider that the external legal opinion could also be charged to the originator or trustee of the SPV, and not necessarily to the undertaking. We emphasize that no additional legal opinion should be | CEIOPS considers that it is up to the parties involved in the transaction to determine this as |

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| | | | required in addition to the one given in the context of the transaction. | part of the arrangement and is not for supervisors to decide. |
| 164. | ESF | 3.47 | We consider that the external legal opinion could also be charged to the originator or trustee of the SPV, and not necessarily to the undertaking. | See 163 |
| 165. | FFSA | 3.47 | We consider that the external legal opinion, given in the context of the transaction, could be charged to the originator or trustee of the SPV, and not necessarily to the undertaking.<br>We emphasize that no additional legal opinion should be required in addition to the one given in the context of the transaction. | See 163 |
| 166. | Ireland Solvency 2 Group | 3.47 | This paragraph states that an external legal opinion should accompany the documentation to be submitted for authorisation confirming that it meets with the requirements: however some of this documentation (listed in paragraph 3.50) is not appropriate to be the subject of a legal opinion (e.g. statement as to full funding; risk management plan), and it is not realistic to expect legal professionals to opine on such documentation since it is not within their areas of expertise. | Agree, not all would require legal opinion. The supervisor should deal with it proportionately on a case-by-case basis. In future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. |
| 167. | KPMG | 3.47 | We believe that the requirement for an external legal opinion on all documentation required for approval is costly and unnecessary. This is clearly a more onerous requirement than would be required for the establishment of a reinsurance undertaking. We suggest the use of a legal opinion would be more valuable if its scope was restricted to ascertaining whether (1) risk transfer has taken place between cedant and SPV and (2) the SPV is bankruptcy remote (paragraph 3.45). | See 166. |
| 168. | Lloyds | 3.47 | We consider that the external legal opinion required as part of the SPV's approval process (and associated costs) could alternatively be commissioned (and paid for) by the SPV rather than the undertaking. | See 163 |

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| 169. | ABI | 3.48-3.49 | We agree with the proposed mandatory conditions to be included in all contracts issued in relation to ISPVs. However, it should be made clear that the level of documentation required should be proportionate to the size and complexity of the vehicle concerned.<br><br>We note that paragraph 3.37 states that there 'should be minimal investment risk in the SPV'. We believe that this statement needs to be clearly set in the overall context of the prudent person approach whereby firms are not bound by quantitative investment limits but are entitled to invest as they think appropriate providing that in doing so the assets chosen reflect the duration of the liabilities, are high quality and sufficiently diversified.<br><br>In respect of paragraph 3.48(e) we agree that a firm cannot achieve a capital reduction at group level from an ISPV unless some of the capital is raised externally. However, it should be made clear that this should not preclude a group from setting up internally funded ISPVs to provide intra-group reinsurance (as envisaged in paragraph 3.43) and that there is no requirement for an ISPV to have third-party investors.<br><br>Likewise it should be made clear that the requirement to use a bankruptcy remote vehicle (paragraph 3.45) allows for the setting up of intra-group ISPVs (ie it should be bankruptcy remote from the undertaking for which it is providing reinsurance not necessarily from the group as a whole).<br><br>Paragraph 3.49 notes that where an ISPV breaches the terms of its authorisation that supervisory action can be taken against it. This is clearly appropriate but CEIOPS should ensure that such action is | Noted<br><br>Undertakings should comply at all times with the prudent person principles.<br><br>CEIOPS does not consider that this is needed for Level 2 advice. A separate section has been added on the possibility intra-group SPVs.<br><br>CEIOPS has decided to delete this from its advice.<br><br>Agreed – some changes made here to reflect this. |

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| | | | proportionate and that appropriate processes are in place to ensure that the entity has an opportunity to remedy breaches before supervisory action is taken. | |
| 170. | CEA | 3.48-3.49 | Please see comments to paragraphs 3.21-3.47. | Noted |
| 171. | Lloyds | 3.48 | With respect to this section (mandatory conditions to be included in all contracts issued):<br><br>(i) Para 3.48.a. - for clarity it may be helpful to replace the phrase "its aggregate limit of the SPV contract" with the phrase "its aggregate limit under the reinsurance (or 'reinsurance like') contract(s) that it issues" and to delete the word 'other' in the phrase "any other anticipated related expenses and fees", so that the paragraph would read:<br><br>"That the SPV shall be fully funded on a Solvency II valuation basis at all times which requires the SPV to have assets that are equal to or greater than its aggregate limit under the reinsurance (or 'reinsurance like') contract(s) that it issues, including any anticipated related expenses and fees".<br><br>(ii) Para 3.48.b. - for consistency with the alteration mentioned in (i) above it may be helpful to add the phrase "(or 'reinsurance like')" after the word "reinsurance" in the phrase "its reinsurance obligations".<br><br>(iii) Para 3.48.d. - again for consistency with the alteration mentioned in (i) above it may be helpful to alter the word "reinsured" at the beginning of the third line to the word "transferred".<br><br>(iv) Para 3.48.f. - for clarity it may be helpful to alter the phrase "the | CEIOPS has considered these suggestions and made some changes to the wording in the advice consistent with the scope of authorisation section. |

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| | | | contract with the SPV" to "their contract with the SPV", so that the paragraph would read:<br><br>"That payments due to investors under the terms of their contract with the SPV are the obligation of the SPV only and, in the event of default, investors will not have recourse to the assets of the undertaking".<br><br>(v) Para 3.48.g. – we consider that the phrase "take the form of" would be slightly clearer than "should be segregated into", so that the paragraph would read:<br><br>"That the SPV should take the form of a bankruptcy remote vehicle separate from the undertaking..." | |
| 172. | Munich Re | 3.48a) | In fulfilling the fully funded criteria program structures should not be disadvantaged. Meaning that not the potential maximum coverage stated in the basic documentation has originally to be funded, but only sufficient funds have to be provided as soon as the SPV is entering into a relevant risk transfer contract. Only the actual obligations of the SPV have to correspond to the funds available. | CEIOPS view is that the SPV needs to be 'fully funded' not 'sufficiently funded' – this is in Level 1 Article 13(26) – see the fully funded section of the paper. |
| 173. | Munich Re | 3.48c) | Diversification of the assets may not be a criteria, if only highest quality assets such as treasuries are used, where sufficient number of independent issuers are available (state programmes). | Noted |
| 174. | Pearl | 3.48-3.49 | We agree with the proposed mandatory conditions to be included in all contracts issued in relation to ISPVs.<br><br>In respect of paragraph 3.48(e) we agree that a firm cannot achieve a capital reduction at group level from an ISPV unless some of the capital is raised externally. However, it should be made clear that this should not preclude a group from setting up internally funded ISPVs to provide intra-group reinsurance (as envisaged in paragraph | See 169 |

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| | | | 3.43).<br>Likewise it should be made clear that the requirement to use a bankruptcy remote vehicle (paragraph 3.45) allows for the setting up of intra-group ISPVs (ie it should be bankruptcy remote from the undertaking for which it is providing reinsurance not necessarily from the group as a whole). | |
| 175. | | | The concept of fully funded outlined in CP36 uses aggregate limits in the contract between the undertaking and the SPV with funding of the SPV up to this level. The CEIOPS' advice at paragraph 3.48a requires it to be a contractual condition that the SPV will "have assets that are equal to or greater than its aggregate limit of the SPV contract, including any other anticipated related expenses and fees." If the aggregate limit is defined in absolute terms then, in practice, this contractual term could be breached as a result of changes in asset values or anticipated expenses and fees.<br>The fully funded concept under the existing Reinsurance Directive has been implemented in some territories by limiting the amount of any exposure under a reinsurance contract with the SPV to the value of the SPV's assets at any point in time (i.e. defining the aggregate limit by reference to the SPV's assets). Consideration should be given to this as an alternative practical way of achieving the fully funded objective – such a contractual term would automatically ensure that the fully funded requirement were met without the need, for example, for stress and scenario testing. | CEIOPS considers that this needs to be carefully monitored throughout the life of the SPV and measures taken to avoid this happening.<br>CEIOPS disagrees and considers that the fully funded concept should be linked to the insurance liabilities (aggregate limit) and that there need to be assets at all times available to meet the aggregate limit of these liabilities. |
| 176. | PWC LLP | 3.48c | The CEIOPS' advice at paragraph 3.48c requires it to be a contractual condition that the SPV's "Assets shall be of a high quality and counterparty exposures should be sufficiently diversified". We believe the terms "high quality" and "sufficiently diversified" require further | CEIOPS does not propose any further clarification here as this should be assess on a case-by-case basis. |

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| | | | clarification to ensure they are interpreted in a consistent fashion. | |
| 177. | PWC LLP | 3.48 | All the items listed at paragraph are stated to be "Mandatory conditions to be included in all contracts issued". Whilst these may be conditions that it is appropriate to mandate on SPVs by way of regulation we query whether all the items listed should be mandated for inclusion in all contracts issued. For example point h. relates to documentation to be submitted for authorisation. Given that it would be expected that authorisation would occur prior to the SPV issuing contracts it is unclear why it should be mandated that contracts issued by SPVs contain terms relating to documentation supporting the SPV's authorisation. | CEIOPS has revised this section following this comment. |
| 178. | IUA | 3.49 | Further to our comment on Para 3.31, we would suggest that guidance should seek to ensure that supervisors have a harmonised approach in the application of these principles and in any response to the breach of these principles. We do however recognise that in the interest of proportionality, supervisors will also need to consider and respond to these principles on a "case by case" basis (as noted in Para 3.7) | Noted. |
| 179. | ABI | 3.50 | These appear reasonable requirements but it should be made clear that particular documents should only be necessary where required by the size or complexity of the ISPV. | CEIOPS believes that supervisors need appropriate levels of information before they can authorise an SPV, as this may lead to capital relief. Proportionality principle applies. See proposal no. 180. CEIOPS has set mandatory requirements that may be supplemented with further requirements if necessary. |
| 180. | CEA | 3.50 | CEIOPS is presenting a full list of documentation requirement which should be fulfilled by the undertaking aiming for approval of a SPV. | CEIOPS has discussed feedback in this area and CEIOPS has set |

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| | | | The presented requirements are excessive when compared to the requirements of the banking sector within the CRD and to the already extensive documentation created to support a securitization.<br><br>Using such existing material should provide sufficient information and assurance for supervisors assessing whether the risk transfer is effective.<br><br>The CEA proposes that the introduction be amended as follows: 'The documentation requirements should be determined on a case by case basis, as relevant, to avoid creating an undue burden and to retain focus on important issues. A selection from the following documents is likely to be required to be submitted , in writing, in relation to a proposed SPV authorization' | mandatory requirements that may be supplemented with further requirements if necessary. This should in practice be linked to the nature, scale and complexity of the transaction. |
| 181. | CEA | 3.50 | In line with our introductory comment, the risk transfer aspects should be assessed by the regulator of the undertaking and the related documentation should thus not be analyzed by the SPV regulator.<br><br>For each item of the documentation, the CP should flag whether it is reviewed by the SPV home supervisor (operating management, assets) or by the undertaking regulator (insurance risk topics). | CEIOPS considers that both supervisors should be involved. |
| 182. | CEA | 3.50 d) | This section mentions an actuarial review of underlying business. We consider this actuarial review could be internally performed, whether by the SPV or undertaking's actuaries and that there is no need for any external actuarial review (i.e. per appointed external actuary). We would like this to be stated clearly in the paragraph. | CEIOPS considers the actuarial review must be independent of the insurance undertaking – it is a matter for the undertaking to determine how this requirement is fulfilled. |
| 183. | CEA | 3.50 e)f) | If authorization is dependent on finalized versions of e) and f) then there could be considerable and unwelcome delays to the normal execution timetable of an SPV.<br><br>Rating agency presales should not be a requirement for privately | Finalised version should be submitted before authorisation. |

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| | | | placed transaction, since they are not available. | Noted. |
| 184. | CEA | 3.50 p) | This section mentions the investor concentration as info to be provided in the authorisation process. However, since the SPV has not been established yet, this information is not relevant. We suggest replacing the investor concentration by the targeted investors.<br>Also the reference to management share is not relevant and should be removed. | Agree – CEIOPS has used "potential investor concentration" - see alignment of interests section. |
| 185. | EFS | 3.50 | We support the flexibility provided for in the existing drafting with respect to the extent and scope of documents to be submitted to the SPV regulator as part of the authorisation process.<br>Using existing material should provide efficiency and sufficient information and assurance for supervisors assessing whether the risk transfer is effective and the rights of the policyholders are not damaged.<br>Further, we propose that the introduction be amended as follows:<br>*['The documentation requirements should be determined on a case by case basis, as relevant, to avoid creating an undue burden and to retain focus on important issues. A selection from the following documents is likely to be required to be submitted, in writing, in relation to a proposed SPV authorisation'].* | Noted.<br>See 180. |
| 186. | EFS | 3.50 | Section d) mentions an actuarial review of underlying business. We consider this actuarial review could be internally performed, whether by the SPV or undertaking's actuaries and that there is no need for any external actuarial review (i.e. per appointed external actuary). We would like this to be stated clearly in the paragraph. | See 182. |
| 187. | EFS | 3.50 | If authorisation is dependent on finalised versions of e) and f) then there could be considerable and unwelcome delays to the normal execution timetable of a SPV. | See 183. |

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| 188. | EFS | 3.50 | Section p) mentions the investor concentration as a documentation to be provided in the authorisation process. However, since the SPV has not been established yet, this information is not relevant. We suggest replacing the investor concentration by the investors' target.<br>Also the reference to management share is not relevant and should be removed. | See 184.<br>CEIOPS does not see why this is the case - see alignment of interests section. |
| 189. | EFS | 3.50 | Section r) mentions that the supervisor can ask for "any other document deemed necessary". We consider this is not helping to implement the harmonisation principle, and could lead to major differences / requirements across the countries. Thus, we recommend suppressing r). | Supervisors need to ask for relevant documentation. Supervisors need to adapt to an developing environment. |
| 190. | FFSA | Para 3.50 r) | This section mentions that the supervisor can ask for "any other document deemed necessary". We consider this is not helping to implement the harmonization principle, and could lead to major differences / requirements across the countries. Thus, we recommend deleting r). | See 189. |
| 191. | FFSA | 3.50 | Among the required documentation, section 3.50 d) mentions an actuarial review of underlying business. We consider this actuarial review could be internally performed, whether by the SPV or undertaking actuaries, and that there is no need for any external acturial review (i.e. per appointed external actuary).<br>The statement "d) actuarial review of underlying business" should be replaced by "actuarial review as provided by undertaking". | See 182. |
| 192. | FFSA | 3.50 | Rating agency presales should not be a requirement as these are not available for privately placed transaction. We recommend to remove this sentence. | See 183. |
| 193. | FFSA | 3.50 | Section 3.50 p) mentions the investor concentration as a | See 184. |

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| | | | documentation to be provided in the authorisation process. However, since the SPV has not been established yet, this information is not relevant.<br><br>We suggest replacing "the investor concentration" by "the targeted investors". | |
| 194. | FFSA | 3.50 | Section 3.50 r) mentions that the supervisor can ask for "any other document deemed necessary". We consider this is not helping to implement the harmonization principle, and could lead to major differences / requirements across the countries. Thus, we recommend to suppress r). | See 189. |
| 195. | GDV | 3.50 | The exhaustive documentation requirements set forth in section 3.50 (the two sets of reporting– financial statements and Solvency II valuation) are disproportionally burdensome. | See 180. |
| 196. | IUA | 3.50 | We note that the documentation requirements for SPV requirements are quite thorough and in many cases could be unduly burdensome; we believe that CEIOPS should make a clarification that the proportionality principle is applicable to all these requirements.<br><br>Further, we propose that the introduction be amended as follows:<br><br>*['The documentation requirements should be determined on a case by case basis, as relevant, to avoid creating an undue burden and to retain focus on important issues. A selection from the following documents is likely to be required to be submitted, in writing, in relation to a proposed SPV authorisation'].*<br><br>We also note the need for an "actuarial review" under (d); we believe that it should be equally acceptable for this to be either an internal or external review. Clarification to this effect would be welcome.<br><br>Section r) mentions that the supervisor can ask for "any other | See 180.<br><br>See 182.<br><br>See 189. |

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| | | | document deemed necessary". We consider this is not helping to implement the harmonisation principle, and could lead to major differences / requirements across the countries. Thus, we recommend suppressing r). | |
| 197. | Lloyds | 3.50 | We consider that para r) - "Any other document deemed necessary by a supervisory authority" - opens up the possibility of different requirements across Europe, making it more difficult to implement the harmonisation principle, and wonder therefore whether it should be deleted. | See 189. |
| 198. | Munich Re | 3.50 | The documentation provided to the supervisory authority may due to a simultaneous procedure not be in a final draft form. It should be clearly stated that substantial drafts may be submitted. The list of documents should be stressed to the principal documents. | See 183. |
| 199. | Pearl | 3.50 | These appear reasonable requirements but it should be made clear that particular documents should only be necessary where required by the size or complexity of the ISPV. | See 180. |
| 200. | CEA | 3.51-3.79 | Proportionality is important in all aspects relating to the establishment, running and credit for SPV but in particular in the application of these paragraphs. | Proportionality is a general principal under Solvency II which also applies relating to SPVs.<br>CEIOPS does not intend to provide more material on this topic as it should be assessed at authorisation. |
| 201. | ESF | 3.51-3.79 | Proportionality is important in all aspects relating to the establishment, running and credit for SPV but in particular in the application of these paragraphs. | See comment 200. |

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| 202. | GDV | 3.51-3.68 | Governance requirements for SPVs should be dealt with in the relevant governance paper (consultation paper no 33). | The scope of the governance paper (CP33) is limited to Article 49 of the level 1 text, which only deals with insurance and reinsurance undertakings.<br>To improve the understanding of CEIOPS' advice on SPV, it was decided that the current paper deals with all aspects relating to them, including the governance aspect, so that the current CP is an homogeneous and separate paper.<br>Nevertheless, each time the current CP refers to the Level 1 text, CP 33 relating to these articles also applies. |
| 203. | FFSA | 3.52 & 3.54 | The two following paragraphs state that:<br>"The persons running the SPV shall be held to the same fit and proper standard as those running a reinsurance undertaking as established in Article 42…<br>The persons running the SPV should have an adequate level of knowledge to be able to understand the risks transferred to the SPV"<br>This should be amended as it will be almost impossible to find reinsurance specialists to manage SPV's. Also, as we noted it in our introductory comment about the legal status of the SPV, they often operate on an autopilot mode; thus the fit & proper requirement should not be the one of a reinsurance undertaking but rather of an ordinary company and ensure appropriate management of the company (i.e. publish accounts in the appropriate standards…) | As the principal objective of the directive is the protection of policyholder, it is obvious that the governance requirements of (re)insurance undertakings, or of SPVs which assumes risks from insurance or reinsurance undertakings, have to be fulfilled, whatever is their legal status.<br>We think that the objective of the directive has to be achieved, even if it means modifications in the way of working of some of the existing SPVs. Individuals running SPV must |

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| | | | | have the necessary skills to enable the SPV to be managed in accordance with this paper. |
| 204. | CEA | 3.52,3.54 | The fit and proper requirements for the persons running the SPV should be set with a view to the nature, scale and complexity of the risk transfer into the SPV. In most of the cases, we would expect such features to generate a proportionately less stringent need for fitness and propriety compared to the case of reinsurers. | See 203. |
| 205. | CEA | 3.52–3.56, 3.62-3.68 | If the SPV is independent from the undertaking then the requirements are potentially not applicable as the undertaking cannot enforce these requirements. | Noted - It is a matter for the SPV to demonstrate not the ceding undertaking. |
| 206. | ESF | 3.52–3.56, 3.62-3.68 | If the SPV is independent from the undertaking than the requirements are potentially not applicable as the supervisor cannot enforce these requirements. | See 205 |
| 207. | CEA | 3.53-3.68 | The CEA asks CEIOPS to better align the governance requirements as included in the CP on Governance and the ones in the current paper. CEIOPS could take the view of putting all such requirements under one CP only, however it will remain important to ascertain that the governance requirements applying to SPVs are proportionate to their purpose. | See 202. |
| 208. | ESF | 3.53-3.68 | ESF asks CEIOPS to better align the governance requirements as included in the CP on Governance and the ones in the current paper. CEIOPS could take the view of putting all such requirements under one CP only; however it will remain important to ascertain that the governance requirements applying to SPVs are proportionate to their purpose. | See 202. |
| 209. | ABI | 3.54-3.56 | The governance requirements for ISPVs should be proportionate to their size and complexity. In general the proposals in the | See 200. |

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| | | | consultation paper appear acceptable. | |
| 210. | Ireland Solvency 2 Group | 3.54 and 3.60 | These paragraphs state that those persons "running the SPV" and those persons holding shares in it should be subject to the same fitness and propriety tests as would apply to persons running a reinsurer or owning a holding in a reinsurer. Currently, SPVs are usually "run" by service providers and "held" by charities. The fitness and propriety tests must therefore be capable of being applied proportionately, since charitable shareholders, for example, although they can demonstrate propriety cannot be expected to demonstrate experience in the prior ownership of financial providers. | Noted. See 200 and 203. |
| 211. | Munich re | 3.54 | Persons running the SPV have to be qualified and familiar with the underlying business. Nevertheless requirements should be less than for directors of an operative reinsurance company, as many functions are outsourced or supported by external specialists. | CEIOPS considers persons running the SPV must be fit and proper. |
| 212. | Pearl | 3.54-3.56 | We agree with the proposals on governance requirements for ISPVs. | Noted. |
| 213. | CEA | 3.55 | Art. 42 of the Level 1 text does not require insurance undertakings to have in place documented (probably it is meant 'written') policies and procedures to ensure that all persons who are subject to Article 42 are fit and proper. According to the Level 1 text, it suffices that these persons comply with the fit and proper requirement. Requiring written policies puts an unnecessary burden upon the SPV without creating better results. As this requirement is unnecessary for an insurer it is even more so for an SPV. We suggest deleting 3.55. | Level 2 text requires written policies and procedures. See CP33. |
| 214. | ESF | 3.55 | Art. 42 of the Level 1 text does not require insurance undertakings to have in place documented (probably it is meant "written") policies and procedures to ensure that all persons who are subject to Article 42 are fit and proper. According to the Level 1 text, it suffices that these persons comply with the fit and proper requirement. Requiring | See 213. |

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| | | | written policies puts an unnecessary burden upon the SPV without creating better results. As this requirement is unnecessary for an insurer it is even more so for a SPV. We suggest deleting 3.55. | |
| 215. | GDV | 3.55 | Art. 42 of the Level 1 text does not even require insurance undertakings to have in place documented (probably it is meant 'written') policies and procedures to ensure that all persons who are subject to Article 42 are fit and proper. According to the Level 1 text, it suffices that these persons comply with the fit and proper requirement (see our comments on 3.42 in CP 33-09). Requiring written policies puts an unnecessary burden upon the SPVs without creating better results. As this requirement is unnecessary for an insurer it is even more so for an SPV. We suggest to delete 3.55. | See 213. |
| 216. | CEA | 3.57 | For some types of shareholders, like charitable trusts, the fitness and propriety requirements can't be applied in full. More in general, these requirements should be applied proportionately to the economic and legal nature of SPVs which is, most of the times, less complex than that of reinsurance undertakings. | See 210. |
| 217. | ABI | 3.60 – 3.61 | It should be clarified that the requirement for having shareholders and members independent of the undertaking is consistent with intra-group vehicles. | A separate section has been introduced on intra-group SPVs. |
| 218. | Munich Re | 3.60 | Shareholder of the SPV may be not an operative company (e.g. a trust). So these criteria should not prevent from using such a shareholder. | See 217. |
| 219. | Pearl | 3.60 – 3.61 | It should be clarified that the requirement for having shareholders and members independent of the undertaking is consistent with intra-group vehicles. | See 217. |
| 220. | Solvency II Legal Group | 3.61 | **Governance requirements - (b) Fit and proper requirements for shareholders or members having a qualifying holding in the SPV** | ICEIOPS has deleted this paragraph and the bankruptcy remote section. We have added a separate section |

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| | | | *CEIOPS advises: At least some shareholders and members having a qualifying holding in the SPV should be independent from the Insurer.*<br><br>Paragraph 3.59 explains that the purpose of requiring the SPV to have external controller shareholders/members is to guarantee the segregation of the SPV from the Insurer as a bankruptcy remote vehicle. As we have indicated above, we do not understand why the SPV's supervisor should be concerned whether the SPV is bankruptcy remote from the Insurer as this is essentially a commercial issue for the Investors.<br><br>If, however, CEIOPS continues to believe that bankruptcy remoteness is relevant to whether the SPV should be authorised, the suggestion that the introduction of external controller shareholders is necessary to, or will in fact, guarantee bankruptcy remoteness requires, in our view, further analysis. If the idea is to immunise the SPV upon the insolvency of the Insurer, it is fundamentally flawed as a matter of corporate law in the UK (and, no doubt, under the law of a number of other Member States). In the UK, whether one company has the same shareholders as another has no direct bearing on the liability of either company should the other become insolvent. It is not appropriate in this paper to explain fully the state of the law in the UK on bankruptcy remoteness; it is sufficient to assert, that except in very exceptional, cases such remoteness will be found to exist wherever activities are carried on in separate legal entities, irrespective of the identity of shareholders. If, on the other hand, the idea is to provide an external check on the operation of the SPV while the Insurer is a going concern, we doubt that the proposal is likely to have much effect. Where the majority holding is retained by the Insurer or its group, external shareholders with minority holdings will not usually have sufficient power to secure any change in the management of the SPV. | on internal SPVs. |

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| | | | Whilst we understand that the position may be different in other Member States, the fact that identity of ownership of two or more companies is irrelevant to securing bankruptcy remoteness in at least one Member State must mean that a requirement to introduce external controller shareholders/members cannot be justified. Instead, it should be a matter for the law of each Member State to determine how bankruptcy remoteness is achieved, if necessary, with the benefit of formal legal advice.<br><br>CEIOPS's proposal would prevent the use of SPVs that are entirely internal to a group, which is the structure which has been used for existing UK SPVs. Finally, we question whether this requirement is consistent with CEIOPS's comments in paragraph 3.43 of CP36, which suggest that internally-funded SPVs are, in principle, acceptable. | |
| 221. | KPMG | 3.63 | We support the proportionate approach to governance as set out in this paragraph, but note that it will be important for insurance undertakings to understand the implicit requirements on their systems of governance where they have entered into a contract with a SPV. In particular, this will require a formal outsourcing arrangement to be prepared. | Noted |
| 222. | ABI | 3.66 – 3.68 | We agree with these proposals. | Noted. |
| 223. | Lloyds | 3.66/3.67 | With respect to governance requirements, specifically the requirement to have sound administrative and accounting procedures, adequate internal control mechanisms and risk management requirements, we consider that the text used in the second sentence of paragraph 3.66 could be clarified. We suggest the following alternative wording (based on that used in paragraph 3.77): | CEIOPS has revised this paragraph. |

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| | | | "Financial statements of the SPV shall be prepared in accordance with the national laws of the jurisdiction where the SPV is established and, if different, on a Solvency II valuation basis". | |
| 224. | Pearl | 3.66 – 3.68 | We agree with these proposals. | Noted |
| 225. | CEA | 3.67 | As stated by the CP, the proportionality principle has to be taken into account to apply standard governance requirements to the SPV. In this context, a SPV should not be required to have all functions required by Solvency II Directive (internal audit function, actuarial function…).<br>But the CP states that "the supervisory authority deems that the nature of the business of the SPV requires these governance functions".<br>We think that the proportionality principle should be linked to the complexity of the SPV and not only to the judgment of the supervisor.<br>Thus, we suggest removing the reference to the supervisory authority and we propose the following text: "A SPV should not be required to comply with all the requirements of the system of governance (…), unless the nature of the business or the complexity of the SPV requires these governance functions." | CEIOPS has revised this section in light of feedback. Where Level 1 text specifies a requirement, it must be complied with. Where the proportionality principle applies, CEIOPS will apply as appropriate. |
| 226. | ESF | 3.67 | As stated by the CP, the proportionality principle has to be taken into account to apply standard governance requirements to the SPV. In this context, a SPV should not be required to have all functions required by Solvency II Directive (internal audit function, actuarial function…).<br>We regard this proportionality as essential. Any requirements should result from active dialogue between the supervisor and the SPV | See 225. |

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| | | | Thus, we suggest removing the sole reference to the supervisory authority and we propose the following text:<br>*["A SPV should not be required to comply with all the requirements of the system of governance (…), unless the nature of the business or the complexity of the SPV requires these governance functions."*] | |
| 227. | GDV | 3.67 | We support CEIOPS view that an SPV does not necessarily has to comply with all governance requirements since it can make use of the relevant functions within the ceding or managing undertaking. | See 225. |
| 228. | IUA | 3.67 | We agree that the governance requirements which SPVs are subject, to will need to be proportionate to the activities of that SPV. Therefore given that the proportionality principle is intrinsically linked to the nature, scale and complexity of an SPV's activities, we would consider it to be helpful if this paragraph clarified that a supervisory authority's judgement on whether to require additional governance requirements, should give due consideration to the nature, scale and complexity of the activities of that SPV. | CEIOPS has revised this section in light of feedback. Where Level 1 text specifies a requirement, it must be complied with. Where the proportionality principle applies, CEIOPS will apply as appropriate. |
| 229. | Lloyds | 3.67 | The second sentence of this paragraph states that "An SPV shall not be required to comply with all the requirements of the system of governance within the Directive concerning reinsurance undertakings unless the supervisory authority deems that the nature of the business of the SPV requires these governance functions". This reflects the reference in the first sentence to the proportionality principle, i.e. "The SPV should have sound governance requirements to a standard as required by the Directive in relation to reinsurance undertakings taking into account the proportionality principle". In order to make it clear that if a supervisory authority deems that the nature of the business of an SPV requires full governance functions the authority must act in accordance with the proportionality principle we suggest that the second sentence be amended to read: | See 225. |

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| | | | "An SPV shall not be required to comply with all the requirements of the system of governance within the Directive concerning reinsurance undertakings unless the supervisory authority deems (acting in accordance with the proportionality principle) that the nature of the business of the SPV requires these governance functions." | |
| 230. | CEA | 3.69-3.75 | The exhaustive documentation requirements set forth in section 3.5 (Supervisory reporting) (the two sets of reporting– financial statements and Solvency II valuation) are: disproportionally burdensome and costly relative to their added value.<br>Furthermore, the statements may inadvertently conflict, and therefore undermine, the nature of financial reporting elements the capital markets investors have determined are relevant for each particular transaction. | CEIOPS has reviewed the documentation requirements in light of the feedback.<br>The Solvency II basis is to provide the same rules for valuation, It will ensure the comparability between Member States. |
| 231. | ESF | 3.69-3.75 | The exhaustive documentation requirements set forth in section 3.5 (Supervisory reporting) (the two sets of reporting– financial statements and Solvency II valuation) are:<br>1) disproportionally burdensome and costly relative to their value;<br>2) not useful with respect to the ability to assess the appropriateness of benefits taken by an undertaking (i.e., is the SPV fully funded with respect to its potential obligations to the underlying);<br>3) will not provide additional meaningful information to investors in the SPV in a manner consistent with the burden; | See 230. |

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| | | | 4) the statements may inadvertently conflict, and therefore undermine, the nature of financial reporting elements the capital markets investors have determined are relevant for each particular transaction.<br><br>As the two sets of reporting requirements – financial statements and Solvency II valuation – would create a significant reporting burden for the SPV, we propose that Para 3.69-3.75 should be amended accordingly; given the limited scope of such entities, the reporting of its financial effects should be limited to reporting prepared by the sponsoring undertaking, i.e. taking into consideration the credit taken and any related disclosures to that. Therefore there is no need for two sets of reporting requirements for SPVs. Although for certain SPVs filing financial statements in accordance with national law could be appropriate, but this should be determined on a case by case basis. | |
| 232. | Pearl | 3.69- 3.79 | We agree that the on-going supervisory reporting requirements for ISPVs should be proportionate and not unduly burdensome.<br><br>The proposed information requirements appear reasonable. However, the requirement to prepare accounts on a Solvency II basis as well as a statutory basis could be onerous. We suggest that accounts on a Solvency II basis should be required only where there are material differences between these and the statutory basis. | See 230. |
| 233. | KPMG | 3.70 | We agree that demonstrating the continuance of the fully funded concept should form part of the (re)insurance undertaking's reporting to the supervisory authority. | Noted. |
| 234. | CEA | 3.73,3.75 | The powers granted towards the supervisor are not totally in line with ensuring a European level playing field. In our opinion clear and objective principles should be set before additional information is provided. | See 189 |

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| | | | Also, it's not clear whether this information can be required by the SPV' supervisor or the undertakings' supervisor. It would be meaningful to limit the request for information to one party, i.e. in priority the SPV supervisor, in order to reduce the number of stakeholders and the burden of the required documentation. | |
| 235. | ESF | 3.73-3.75 | The powers granted towards the supervisor are not totally in line with ensuring a European level playing field. In our opinion clear and objective principles should be set before additional information is provided.<br>Also, section 3.73 states that this information can be required by the SPV or undertaking supervisor. It would be meaningful to limit the request for information to one party, i.e. in priority the SPV supervisor, in order to reduce the number of stakeholders and the burden of the required documentation. | See 234. |
| 236. | KPMG | 3.74 | We agree with the proposed approach to supervision. | Noted. |
| 237. | IUA | 3.75 | We believe that any requirements imposed on the SPV in excess of the annual accounts, should be proportionate, and where possible, harmonised between supervisors. A principles-based approach might facilitate this. | In the future CEIOPS may develop Level 3 guidance to achieve the adequate level of harmonisation. |
| 238. | ABI | 3.76 – 3.79 | The exhaustive documentation requirements set out in section 3.5 (Supervisory reporting) (the two sets of reporting– financial statements and Solvency II valuation) are:<br>1) Disproportionally burdensome and costly relative to their value,<br>2) Not useful with respect to the ability to assess the appropriateness of benefits taken by an undertaking (ie. Is the SPV fully funded with respect to its potential obligations to the underlying) | See 230. |

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| | | | 3) Will not provide additional meaningful information to investors in the SPV in a manner consistent with the burden<br>4) Furthermore, the statements may inadvertently conflict, and therefore undermine, the nature of financial reporting elements that capital markets investors have determined are relevant for each particular transaction.<br>As the two sets of reporting requirements – financial statements and Solvency II valuation – would create a significant reporting burden for the SPV, we propose that Para 3.69-3.75 should be amended accordingly; given the limited scope of such entities, the reporting of its financial effects should be limited to reporting prepared by the sponsoring undertaking, i.e. taking into consideration the credit taken and any related disclosures to that. Therefore there is no need for two sets of reporting requirements for SPVs. Although for certain SPVs filing financial statements in accordance with national law could be appropriate, but this should be determined on a case by case basis. | |
| 239. | Munich Re | 3.76 ff | Accounting rules for the SPV should be minimized, as the underlying risk is already reflected in the cedent's balance sheet/solvency reporting. | See 230. |
| 240. | CEA | 3.77 | The valuation basis for assets and liabilities needs to be consistent and reflect reality. In particular we note that for an EV securitisation, the commission paid to the sponsor reflects the expected excess value of the reserves transferred and the future premiums over claims and needs to be reflected in the SPV balance sheet. Artificial constraints on valuation could result in the SPV erroneously appearing insolvent as the debt securities issued will be shown as a liability. | See 230. |

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| 241. | ESF | 3.77 | The valuation basis for assets and liabilities needs to be consistent and reflect reality. In particular we note that for an EV securitisation, the commission paid to the sponsor reflects the expected excess value of the reserves transferred and the future premiums over claims and needs to be reflected in the SPV balance sheet. Artificial constraints on valuation could result in the SPV erroneously appearing insolvent as the debt securities issued will be shown as a liability. | See 230. |
| 242. | Lloyds | 3.77 | With respect to supervisory reporting (accounting, prudential and statistical information requirements), we would query whether it is appropriate for this paragraph to say that an SPV's annual accounts together with the undertaking's supervisory reporting requirements "would suffice" for regulatory purposes when the corresponding point is expressed in paragraph 3.71 in terms of the SPV's annual accounts together with the undertaking's supervisory reporting being "considered the minimum information required" for regulatory purposes? | CEIOPS has made some changes here to reflect this concern. |
| 243. | ABI | 3.81 | We agree that the requirement for an ISPV to be fully funded means that there is no need for it to calculate an individual MCR or SCR. | Noted. |
| 244. | CEA | 3.81 | The CEA agrees to this important conclusion. | Noted. |
| 245. | ESF | 3.81 | ESF agrees to this important conclusion. | Noted. |
| 246. | KPMG | 3.81 | We agree that there should be no capital requirement (MCR or SCR) applied to the SPV. | Noted. |
| 247. | Pearl | 3.81 | We agree that the requirement for an ISPV to be fully funded means that there is no need for it to calculate an individual MCR or SCR. | Noted. |
| 248. | CEA | 3.84 | This requirement should only be applicable when a SPV is under "control" of the (re-)insurance undertaking. | Not agreed. |

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| 249. | CEA | 3.84 | This paragraph refers to a 'corresponding fall'. This could be read to imply a 1 for 1 decrease in the reinsurance asset. This is not necessarily the case and the CEA recommends this is modified to '...should be reflected in a reassessment of the reinsurance asset within the undertaking'. | Agreed. |
| 250. | ESF | 3.84 | This requirement is only applicable when a SPV is under "control" of the (re-)insurance undertaking. | Not agreed. |
| 251. | ESF | 3.84 | This paragraph refers to a "corresponding fall". This could be read to imply a 1 for 1 decrease in the reinsurance asset. This is not necessarily the case and ESF recommends this is modified to<br>*['...should be reflected in a reassessment of the reinsurance asset within the undertaking'.]* | Same as 249. |
| 252. | Lloyds | 3.84 | The last sentence of this paragraph states that: "Any fall in the value of the assets within the SPV should be mirrored by a corresponding fall in the reinsurance asset within the undertaking." The word 'mirrored…" could be interpreted as requiring that any reduction in the value of the SPV's assets should be reflected in a reduction in the undertaking's assets on a 1 to 1 basis which would not necessarily be the case. We accordingly suggest that the wording be amended to: "Any fall in the value of the assets within the SPV should be reflected by an appropriate associated reduction in the value of the reinsurance asset within the undertaking". | Same as 249. |
| 253. | Solvency II Legal Group | 3.86 – 3.87 | **Requirements for undertakings who use SPVs**<br>*CEIOPS advises (at para 3.86): There should be an alignment of interests between the Insurer and the SPV …*<br>*CEIOPS advises (at para 3.87): This alignment could be achieved by the Insurer retaining an investment through a convertible loan note* | CEIOPS considers that this alignment of interests is important to ensure the proper running and functioning of the SPV, even though it is acknowledged that the obligations from the liabilities |

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| | | | *or a lower rated security in the SPV or the Insurer retaining some of the risks reinsured on its balance sheet. Where any assets or rights of an SPV are held or controlled by the Insurer those assets must be separately identified by the Insurer. This provides the Insurer with a vested interest in the operations of the SPV which may also make it a more attractive investment as Investors have confidence the Insurer retains an interest in the risk being reinsured to the SPV.*<br><br>First, as indicated above, we doubt that the protection of investors forms any part of the objectives of Solvency II.<br><br>From a policy perspective, we understand that this requirement reflects concerns about the banking sector i.e. because the usual structure of securitisations in the banking sector is for banks to transfer their exposure to an asset (e.g. a portfolio of mortgages) in its entirety to an SPV, there is no incentive on the banks to originate assets that meet certain quality standards (hence issues arising with US sub-prime mortgages). We are aware that proposed changes to the Capital Requirements Directive (CRD) are intended to address this issue. However, we would make two points. First, the same concern does not arise in insurance sector transactions as risk is transferred to the SPV under a contract of reinsurance and the Insurer retains ultimate liability to its insured to meet their claims in full. Because the Insurer retains this liability to its insureds, it makes little sense to add a requirement for the Insurer to align its interests further with the SPV. Second, there is no need for such a requirement in the context of entirely intra-group SPV arrangements, such as those established to date in the UK under the Reinsurance Directive regime. This regime is, to a large degree, replicated under Solvency II.<br><br>A preferable way of safeguarding the interests of Investors where they are external to the originating Insurer's group would be to insert appropriate conditions into the contractual arrangements between | remain with the undertaking. |

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| | | | the Insurer and the SPV, including requirements in respect of claims management; underwriting activities, etc. Breach of such obligations, in the UK at least, is likely to have serious implications for the enforceability of the reinsurance contract by the Insurer, providing more than adequate safeguard for the interests of Investors. Similar conditions would appear in traditional contracts of reinsurance.<br><br>As a general matter, to require some alignment of interests between the Insurer and SPV is also not a regulatory requirement of traditional reinsurance arrangements.<br><br>***Finally, we note that a similar requirement to the proposed CRD requirement has already been inserted in Article 133 of the Framework Directive in order to protect insurance and reinsurance undertakings when acting as investors in SPVs or in securitisations originated by other financial institutions. It is not clear that further measures are required through the CEIOPS advice.*** | |
| 254. | CEA | 3.87 | The proposal for a (re-) insurance undertaking to have an interest isn't fully clear.<br><br>A SPV is normally set up to transfer insurance risk or a pre-defined portion. Some arrangements will have the characteristics of quota share where alignment is obvious. On the other hand, insurance linked securities are significantly different from credit risk vehicles like ABS or MBS and do not normally require measures like risk retention obligations in order to ensure the alignment of interests. | Same as 253. |
| 255. | ESF | 3.87 | A SPV is normally set up to transfer insurance risk or a pre-defined portion of such risks. Some arrangements will have the characteristics of quota share where alignment is obvious, and we feel this should be taken into account as part of the alignment of interest of the undertaking. | Same as 253. |

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| | | | Insurance linked securities are significantly different from credit risk vehicles like ABS or MBS and do not normally require measures like risk retention obligations in order to ensure the alignment of interests. It is important that CEIOPS notes this in 3.87 | |
| 256. | GDV | 3.87 | The mandatory retention of risks might as discussed in the Capital Requirements Directive is a reasonable approach for the transfer of credit risks in order to ensure the required risk management discipline. However, Insurance Linked Securities are significantly different from credit risk vehicles like ABS or MBS and do not require measures like risk retention obligations in order to ensure the alignment of interests. | Same as 253. |
| 257. | IUA | 3.87 | A SPV is normally set up to transfer insurance risk or a pre-defined portion of such risks. Some arrangements will have the characteristics of quota share where alignment is obvious, and we feel this should be taken into account as part of the alignment of interest of the undertaking.<br><br>Insurance linked securities are significantly different from credit risk vehicles like ABS or MBS and do not normally require measures like risk retention obligations in order to ensure the alignment of interests. It is important that CEIOPS notes this in 3.87 | Same as 253. |
| 258. | IUA | 3.91 | We note that undertakings who use SPV's will be required to have "appropriate modelling and risk management understanding"; we would like clarification as to whether, in practice, this would require undertakings who use SPV's to have an internal model. | The requirements in regard to using the internal models are provided for in Chapter VI, section 4, subsection 3 of the Directive Solvency II. |
| 259. | CEA | **Reference** | **Additional section with comments on SPV, undertakings and the degree of independence between the two.**<br><br>**These comments may be outside the scope of the paper, nevertheless we consider them to be important in formulating a holistic view of SPVs and their treatment in undertakings'** | Noted |

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| | | | **books.** | |
| 260. | CEA | General comment | Any SPV over which "control" is exercised should be fully consolidated "line-by-line" (similar to the principles stated in IAS 27). Such an SPV is fully integrated in the Solvency II process and all capital requirements, supervisory review processes and disclosures. Equal to a "normal" subsidiary.<br><br>SPV where only significant influence is exercised is included in the economic balance sheet as a participation. The economic value of this participation is included. If the SPV is insurance related the proportionate SCR should be included (see also CEA paper on the treatment of participations). Such a SPV should also be included in the pillar II assessments (especially ORSA).<br><br>For SPV where no control is exercised, but still an economic share is recognised, an equity shock should be applied.<br><br>All other SPV, in which the (re-)insurance undertaking has and no legal ties (no interest in the share capital or loans given) or has no economic ties (no interest in the risk and rewards) should not lead to capital requirements or other supervisory measures because such a SPV is really independent and should be assessed as a standalone entity. The only possible risk could be reputational risk. This is a pillar II risk.<br><br>It is unclear whether a (re-)insurance undertaking is considered to be a group when it has established a SPV in which an economic (or legal) relationship exists. In principle any SPV which is consolidated in the Financial Statements of an undertaking implies for accounting purposes a consolidated Financial Statements and a company Financial Statements. If that is the case the full capital requirements should be applicable for the "group" and not for the solo undertaking (see also CEA paper on participations). | Noted. Accounting requirements fall outside the scope of the Paper. For solvency valuation purposes please see Consultation Paper no. 35 – Valuation of Assets and "Other Liabilities", section 3.2.5..<br><br>The recognition of the SPV as a risk mitigation technique should not be based on the level of influence that is exercised but on the Principles laid down in the CP36. |

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| 261. | CEA | 3.45 | If a bankruptcy remote vehicle is established no legal ties exist. Is the undertaking then able to enforce all the requirements as set by CEIOPS in this advice? A SPV is normally a separate legal entity and can only be subject to Solvency regulation if it is meeting the requirements of the articles concerning the scope of the Directive. For any SPV falling out of the scope of the directive it seems strange to require solvency II principles other than requiring the undertaking to assess the effectiveness of the risk transfer, the consolidation requirements and any accompanying risks which would arise from the SPV-transaction. Clearly the relationship between the (re-)insurance undertaking and its policyholders remains and are unchanged. | CEIOPS has removed the bankruptcy remote principle. |
| 262. | CEA | 3.69 | This paragraph isn't fully clear if the SPV has no links to the undertaking. First reference is made to annual accounts (these are either based on local accounting standards or on IFRS). Second referral is made to "on solvency II basis". This paragraph seems to require annual accounts calculated on an annual accounts and solvency II basis. The question also arises on what legal basis is the supervisor enforcing this requirement when the SPV is outside the scope?<br><br>We also understand that in light of the implementing measures on groups the whole issue of SPV will have to be revisited. | See 230 |