Summary of Comments on CEIOPS-CP-46/09 **Consultation Paper on the Draft L2 Advice on Own Funds - Classification and eligibility**	**CEIOPS-SEC-109-09**

CEIOPS would like to thank AAS BALTA, AB Lietuvos draudimas, AMICE, Association of British Insurers, ASSOCIATION OF FRIENDLY SOCIETIES, Belgian Coordination Group Solvency II (Assuralia/, BNP PARIBAS, CEA, CRO Forum

ECO-SLV-09-441, CFO, Danish Insurance Association, DENMARK: Codan Forsikring A/S (10529638), DIMA (Dublin International Insurance & Management , European Union member firms of Deloitte Touche To, FFSA, FRIENDS PROVIDENT, German Insurance Association – Gesamtverband der D, GROUPAMA, Groupe Consultatif, Institut des actuaires (France), INTERNATIONAL GROUP OF P&I CLUBS, International Underwriting Association of London, Investment & Life Assurance Group (ILAG), KPMG ELLP, Legal & General Group, Link4 Towarzystwo Ubezpieczeń SA, Lloyd's, Moody's Investors Service, Munich RE, NORWAY: Codan Forsikring (Branch Norway) (991 502 , OAC Actuaries and Consultants, Pacific Life Re, Pearl Group Limited, PricewaterhouseCoopers LLP, RBSI, ROAM –

, RSA Insurance Group PLC, RSA Insurance Ireland Ltd, RSA\32\45\32Sun Insurance Office Ltd., Solvency II Legal Group

This response reflects the, SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799), UBS, UNESPA (Association of Spanish Insurers), and XL Capital Ltd

The numbering of the paragraphs refers to Consultation Paper No. 46 (CEIOPS-CP-46/09)

No.	Name	Reference	Comment	Resolution
1.	AAS BALTA	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted
2.	AB Lietuvos draudimas	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted
3.			Confidential comment deleted	
4.	AMICE	General Comment	These are AMICE´s views at the current stage of the project. As our work develops, these views may evolve depending on the other elements of the framework which are not yet fixed. AMICE members are convinced that the increase in the amount of	

			specifications appointed by CEIOPS aims to improve the protection of policyholders by enhancing the quality of capital available. However these requirements may have a perverse effect on the availability of certain elements of capital, making it harder to raise new capital and increasing the financing costs (potential capital providers may react negatively to the imposition of certain limits) As a result consumers will be faced with a higher cost of insurance.	
			Secondly, the requirements for subordinated liabilities are very restrictive and not in line with current practices in capital instruments. Capital instruments where redemption is linked to the undertaking's solvency position, and not necessarily to their ability to absorb losses should be allowed either in Tier 1 or 2. Should this possibility not be allowed, this could lead to severe difficulties to obtain external financing.	See ref 3.1.1
			Thirdly, we consider that the limits proposed by CEIOPS (50% for Tier 1, 15% for Tier 3) are not consistent with the Level 1 text. CEIOPS is not providing satisfactory reasoning for a more restrictive tiering.	See ref 3.1.2
			Furthermore, AMICE is not in favour of classifying the difference between the best estimate and the amount to be paid in case of winding-up (we understand the latter equals the local GAAP technical reserve), as Tier 3. The main reasons are the following: - Since this amount is included in the difference between assets and liabilities, the Level 1 text considers this amount as basic own funds. - It could be very demanding and burdensome to model best estimate run-off expenses. Moreover, winding-up technical provisions would probably be lower than on-going technical provisions, if undertakings assume to apply reduced expenses in the majority of departments (commercial, strategic, financial…).	See refs 2.2, 3.1.2, 3.1.3, 3.1.4, 3.2

			- QIS 4 showed that the best estimate of technical provisions (which included part of the unrealized gains) was higher than local GAAP technical reserves in the life insurance business. If this amount is disconnected from unrealized capital gains or losses, this will lead to negative values of Tier 3 own funds. - There is a risk that changes in this amount will be considered in the SCR calculation (e.g. in the mass lapse risk module) without being recognized in the eligible elements of capital (if the 15% threshold is breached); Therefore we wonder whether this statement is consistent with the Level 1 text of the Directive. For the reasons mentioned above, we believe this item should be recognised as Tier 1 eligible elements of capital. AMICE members have also the following remarks: No reference is made to grandfathering. We are of the view that special attention should be paid to capital instruments that have been issued before Solvency II enters into force. We would also like to note that no explanation is given to exclude liabilities shorter than 3 years (eligible amount should cover any event within one-year horizon) from the eligible elements of capital. We have concerns about CEIOPS proposal on "net financing". Investment in capital instruments (as equities or bonds) should not be covered by the net financing approach and should only be limited to loans. This would be an adverse change compared to the current situation.	
5.	Association of British Insurers	General Comment	1) We are particularly concerned by the draconian restrictions imposed on capital eligibility by CEIOPS which largely restrict regulatory capital to ordinary shares and retained earnings and	

			ignore the significant benefits of hybrid capital instruments. The proposals overtly go beyond the requirements set out in the Framework Directive and the objective of policyholder protection but are not supported by clear evidence or rationale. We believe this has been driven by failings in the banking sector and could have very serious consequences in terms of the range of funding options and to the cost of raising capital for insurers. 2) There is no mention of grandfathering in the CP, which is another great concern. Ensuring grandfathering once the Solvency II regime is implemented will be crucial to avoid any turbulence in the financial markets as the non-recognition of grandfathering would force insurers to raise new capital and significantly increase its cost. We would highlight in this respect that for banks, the current proposal is that any instruments not eligible under the new capital regime but recognised under current national frameworks will be eligible for their current capital treatment for a minimum of 10 years and a maximum of 30 years. We would expect similar rules to apply to the insurance sector. The need for clarity on this issue is very urgent as firms will need time to implement any changes to their capital planning. 3) Hybrid capital instruments have been vital for the preservation of insurance companies' regulatory solvency. They have provided efficient and effective protection to policyholders throughout the financial turmoil. They should not be eradicated. Restricting tier 1 capital to ordinary shares and retained earnings would relegate to tier 2 (or tier 3) a range of instruments with proven loss absorbing capacity and would substantially increase the cost of insurance both for firms and policyholders in Europe without delivering material economic benefit. Furthermore, restrictions on the use of hybrid capital instruments would also result in an unfair treatment of investors in such instruments who would be placed in	 See refs 3.1.1, 3.1.2 and 3.1.4 See resolution note 3 on grandfathering.

			inferior position compared to ordinary shareholders. We also believe that deferred tax assets and other loss absorbing items should be given appropriate recognition as eligible capital, provided these instruments meet IFRS definitions and are signed off by the Board and the auditors. 4) Combined with the restrictions on tier 1 and tier 2 capital eligibility, the setting of automatic triggers at the level of the SCR will also contribute to the substantial increase of the cost of capital for insurers as this would make instruments extremely unattractive to investors. Whilst firms could have the option to set triggers at the level of the SCR we believe this should not be mandatory. Triggers should normally be set at the level of the MCR which is the trigger for run off rather than going concern recovery. Furthermore, we believe that setting automatic triggers at the SCR level is inappropriate. As well as making hybrids highly unattractive, this would implicitly introduce a third capital requirement by forcing undertakings to hold a significant buffer above the SCR to absorb short term volatility. We believe that having the SCR as a hard target is inconsistent with the Directive. This proposal would add an explicit margin of prudence to the capital requirement which is in direct contradiction to the principle of Solvency II. The practical effect of this will be to change the SCR into the real MCR. 5) We are concerned that the requirements proposed in CP 46 are more onerous than what is suggested in the draft bank Capital Requirements Directive. If adopted as proposed, CP 46 would result in an unlevel market playing field where insurers would be disadvantaged compared to banks. At the very least insurers should get equal treatment to that of banks in the recognition of capital instruments - given the lack of an equivalent liquidity risk, and the longer term nature of insurance there is, in fact a good case for allowing debt capital instruments to a far greater extent.	

			6) Maturity of capital instrument should not be directly related to the insurer's liabilities - Although setting some criteria for the term of the sub-debt does give an indication of the quality of the capital for solvency purposes, we disagree with CEIOPS desire to link this to the duration of the longest liability. Although the assets backing the technical provisions should have sufficient duration, the capital requirements are just a buffer against adverse experience as measured by a one year VAR approach. Therefore, we would argue that capital is a buffer against adverse experience (and with the inclusion of the risk margin there is incentive to recapitalise the firm) and so the duration of the liabilities are less relevant. 7) We are concerned by the confusion in this paper between calculating capital and calculating the best estimate with an additional deduction based on calculating technical provisions, on a run off basis rather than going concern. This confusion should be avoided as it risks double counting and is not in line with Article 76 (2) of the Framework Directive, which requires technical provisions to be a best estimate of future cashflows. 8) No recognition of value of share transfer from with-profit funds would also be very damaging. Given the issues above, the big risk here is that all these changes have been made but are untested via QIS. In addition, these have not been tested under different economic circumstances.	
6.	ASSOCIATIO N OF FRIENDLY SOCIETIES	General Comment	The Association of Friendly Societies represents the friendly society sector in the UK. We have 46 friendly society members, who are all member-owned mutual organisations. Typically they offer long term savings and protection policies, with generally low minimum premiums. Friendly societies are typically small, though well-capitalised, and have a distinctly different business model to shareholder-owned insurers.	

			We would like to thank CEIOPS for the chance to comment on this paper. We believe that there is an attempt in this CP to introduce a solvency assessment carried out assuming the winding up of the insurer. We believe this is based on a flawed interpretation of Article 93. We would state that: 1. Any assessment of solvency on a winding up basis requires a complete reassessment. Technical provisions have to be calculated on the basis of the minima that can be paid on winding up, the SCR should remove any items that are long term in nature (most of the life underwriting standard formulae as well as the operational risk elements) and expenses need to be provided for the legal costs but ignoring any longer term expenses of running the business. 2. In the UK, apart from friendly societies, it is impractical to wind up a life insurer without first carrying out a transfer of engagements to another provider. All insureds are unsecured creditors requiring agreement to the terms of the winding up and the liquidators are under responsibility of primary legislation to continue the organisation if it can be continued. A transfer of engagements returns all of the capital to the position under CP39 and removes any “winding up gap”. 3. Any supervisor would only look upon winding up as very much the last ditch. Customers will lose valuable guaranteed benefits and may be materially worse off due to change in insurability. Winding up is not attractive without a transfer of engagements. 4. The CP is deeply inconsistent with CP40 on risk margins which views the risk margin as being set at a level whereby a provider taking over the liabilities after a transfer of engagements	See refs 2.2, 3.1.2, 3.1.3, 3.1.4 and 3.2

			(prior to winding up the insurer) would be happy to take over the risks. We also believe that CEIOPS should be viewing Tier 1 capital as that freely available without let or hindrance after a 1:200 stress. The fact that some hybrid capital forms have not been reduced in value due to the relatively modest impact that 2008 has had on insurers should not be seen as a sign that a real 1:200 event would cause insurers to take full advantage of their powers on hybrid capital. As a trade body of mutual organisations, we also have particular concerns over the exclusion of the only method that our members may have of raising capital in a crisis. Hybrid capital could become available from trade unions or other associated interest groups to our members but we would not be able to take advantage of the availability of this source of capital to ensure the organisation is financially secure. The removal of hybrid capital is particularly detrimental to mutual organisations.	See refs 3.1.1, 3.1.2 and 3.1.4
7.			Confidential comment deleted	
8.	Belgian Coordination Group Solvency II (Assuralia/	General Comment	We note a strengthening of requirements for eligibility under Tiers 1 and 2, compared with the Level 1 text that could have significant consequences for currently issued subordinated liabilities. In that context, we remind that such subordinated liabilities are a less expensive way for insurers to raise additional prudential capital in comparison with equity capital. We note that currently issued subordinated liabilities are often classified as core equity in the internal economic capital model of insurers. We fear that a great share of those sub loans would be reclassified to the Tier 2 or 3 should the CEIOPS proposals be adopted. In that situation some of current sub loans could become "useless" from a prudential capital	Noted. See resolution note 3 on grandfathering.

			perspective while they are probably not redeemable in short term. Therefore we urge for a "grandfathering" clause, with a reasonable transitional period for perpetuals. We recommend that only the "new" loans - occurring after the final eligibility criteria are adopted - are directly classified in a compliant way with the new requirements, while existing loans enjoy a transitional, and less stringent regime. This relates to the more general observation about the issue of transition from the old to the new regime. The paper refers to CP 35 concerning the definition of assets and liabilities for the concept of "excess of assets over liabilities" which is the first part of the primary definition of basic own funds (art.87 (1) Directive). Moreover, the CP footnote 6 stipulates that valuation standards should be compatible with international accounting developments. We remind that CP 35 refers to the valuation and not the definition of assets and liabilities. In particular we note that IFRS is currently working on an Equity-Liability project that could strengthen the requirements for equity definition under IFRS (in other words, more items classified as liabilities). It is crucial to know if CEIOPS would a priori admit as prudential capital some items currently defined as IFRS equity capital but that would tomorrow be reclassified as IFRS liabilities. In other words, CEIOPS should clarify its comment on par. 3.91 more clearly.	 See refs 2.2, 3.1.2, 3.1.3, 3.1.4, 3.1.6 and 3.2
9.	CEA, ECO-SLV-09-441	General Comment	Introductory remarks: The CEA welcomes the opportunity to comment on the Consultation Paper (CP) No. 46 on Own Funds – Classification and Eligibility. 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. 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. We are concerned that the advice has been driven to an excessive degree by failings in the banking sector. The paper seeks to eradicate a significant range of instruments which in the insurance sector can provide effective and efficient protection for policyholders. Moving the insurance sector towards a much higher dependency on equity capital will substantially increase the cost of doing insurance business in Europe without delivering material economic benefit and will increase the cost of buying insurance for policyholders. In particular, fixed-income investors would be cut off. Such a reduction of the diversification of the investor base is not desirable. CEIOPS has provided no evidence that hybrid instruments in the insurance sector have "failed". When setting the eligibility and classification of own funds, differences in the business models and supervisory frameworks of the banking sector and the insurance sector need to be considered. We strongly believe that a level playing field on capital markets needs to be ensured between insurers and other capital instruments providers. To that extent, we would expect that the definition of hybrid instruments for the insurance sector is at least the same as the one set for the banking sector. A comparison of this draft CEIOPS advice with what is currently being discussed as part of the CRD review will show that this is far from being the case. The particularities of the insurers' business model need to be taken	Noted.

			into account when setting the eligibility limits. In contrast to other financial services providers, insurers are characterised by an inversion to cost/revenue cycles. In financial terms this means that insurers are primarily funded by policyholders' premiums, making them less exposed to liquidity risk and to any problems accessing credit markets which were at the origin of the recent financial turmoil. We would expect limits for the eligibility of own funds to reflect these differences. Moreover, the conceptual differences between the banking and the insurance supervisory frameworks need also to be considered when comparing the eligibility limits between the two sectors. The differences in the measurement basis need to be appropriately assessed. Also, the fact that Solvency II introduces many layers of protection and a ladder of intervention between the MCR and the SCR to ensure that obligations towards policyholders are met is a structural difference that needs to taken into account. For these reasons also we would expect limits for the eligibility of own funds to reflect these differences and to be less restrictive than that of the banking sector. We strongly urge CEIOPS not to depart from the principles in the Framework Directive. There is no rationale or evidence why limits and definitions for each one of the tiers have been made more conservative. Requiring more than half of own funds in tier 1 is unviable with the currently proposed definitions for tiers. Excluding hybrid instruments from tier 1 will make capital much more expensive for insurers and their policyholders. In particular, disallowing any incentive to redeem and mechanically linking the duration to that of the longest liability is strongly penalising the insurance sector which has shown strong resistance to the financial	

			turmoil. Instead, the duration of liabilities should be taken into account as part of the Pillar II supervisory review and the ORSA as it goes beyond the one year time horizon set for Solvency II regulatory capital requirements. Beside conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that conversion into equity with the possibility of a later write up and non-cumulative payment deferral (principal or coupon) and in certain circumstances deferral with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis. It is also crucial that capital instruments characteristics are assessed jointly. Setting automatic trigger points at the level of the SCR will make instruments unsalable. Instead, automatic triggers should be set at the level of the MCR where ultimate supervisory actions are possible. Between the SCR and MCR, supervisory powers should be proportionate and escalating commensurate with the level of breach of the solvency control level, with triggers possibly being activated when this has been defined as part of the recovery plan submitted by the undertaking. Although it was expected under Level 2, there is no mentioning of grandfathering. Grandfathering will be crucial once the new solvency regime is in place, as this will give stability in the capital market. If grandfathering arrangements were not available under level 2, we would expect that some insurers, depending on the detail of the implementing measures, may need to raise new capital. This could cause turbulence in the financial markets and would increase costs of capital significantly, especially in current conditions. For these reasons, it is crucial that all instruments issued before the date when the Solvency II regime comes into	

			force, are covered by appropriate grandfathering rules. Building the assessment of the eligibility of own funds based national reporting requirements when these do not reflect economic values is wrong. Some items are explicitly excluded from own funds or Tier 1, such as deferred taxes, specific statutory or legal reserves and profit at inception. In a Solvency II balance sheet, all assets and liabilities will be already calculated and assessed from an economic perspective as opposed to an accounting perspective. Assets and liabilities which are not valued under a Solvency II market consistent balance sheet fall under the "excess of assets over liabilities" which by construction is Tier 1 capital. We are strongly concerned and disagree with what CEIOPS calls the "winding-up gap" which is probably based on a misunderstanding of what the Framework Directive is trying to achieve. The requirement however seems to be implying that the Solvency II policyholder liabilities are not reflecting the amount at which policyholder liabilities would have to be settled in the case of a winding up. This is misleading and probably based on a misunderstanding of what article 74 of the Framework Directive is trying to achieve. We do not understand how CEIOPS considers policyholders' liabilities under a winding basis when it acknowledges that this is clearly contradictory to the Framework Directive. There is no evidence why the value of policyholders' liabilities would be higher in a winding-up case than in ongoing concern basis. The risk of lapses and surrenders being higher than anticipated in a winding-up case is captured by the SCR lapse risk module. Assets and liabilities should be valued at their market consistent basis under Solvency II. Any risks not included in the market consistent value of assets and liabilities should be covered up to the 99.5% VaR by the SCR.	See refs 2.2, 3.1.2, 3.1.3, 3.1.4 and 3.2

10.	CFO	General Comment	The level 2 Tiering requirements are significantly more restrictive than those set out in the Solvency II Directive and CRD banking requirements. Implementation measures must not contradict or significantly deviate from the Directives. We believe that many hybrid capital instruments are as good as equity and should be included as part of Tier 1 capital. The consultation paper sets Tiering requirements which are more stringent than those originally requested by the Directive, in some cases also grounding them on principles which conflict with core elements of the Solvency II approach, such as excluding all hybrid capital from Tier 1. This will likely lead to competitive distortions, regulatory arbitrage and higher capital cost of insurers, ultimately leading to a higher cost to the policyholder. With CEIOPS diverging from bank regulations and including maturity thresholds based on insurance obligations, three different classes of hybrid securities (bank, life and non-life) will be created. Hybrid will no longer be a reliable form of capital. While we acknowledge that these implementation measures need to provide further details in certain areas, we do not believe that they should go beyond the requirements of the Solvency II Directive. The principles adopted in the consultation paper conflict with core elements of the Solvency II Directive. The Directive requires a market value approach so that in adverse scenarios, sufficient assets remain to transfer the liability to a third party. However, the consultation paper imposes additional limitations based on IFRS or local GAAP valuation approaches. For example, profit recognition issues and prudential principles lead to reserving requirements which are higher than those under the market value	

			approach. Using different local accounting bases as a starting point contradicts the idea of a harmonised approach and does not create a level playing field for all financial institutions. In addition, parts of the proposed implementation measures deviate from the economic principles underlying Solvency II, for example the treatment of equalisation reserves in 3.96. We recommend that the economic principles underlying Solvency II are upheld so items such as net deferred tax assets are given their true economic value. The proposed guidance would require significant changes to insurers' capital arrangements which would have an undesirable impact on financial markets. If CP46 is implemented as proposed, many insurers would need to significantly change their capital arrangements which would have an undesirable impact on financial markets as companies sought to close out positions and move own funds in line with the CP46 requirements. Grandfathering of existing capital instruments is a critical issue which requires consideration in CP46. Grandfathering arrangements will be required if CP46 is implemented as currently imposed in order to avoid undesirable market activity and significant adverse financial impact to the insurance industry. It is important that instruments issued in the past can rely on grandfathering. This grandfathering should be applicable to all instruments placed in the market before the Solvency II adoption date. The level 2 measures should provide guidance around this process.	

			The proposed guidance would require companies to revise terms and conditions of existing policies and communicate these changes to policyholders. In some territories the basis for calculating discretionary benefits is based on conditions specified in contracts associated with the own funds of the company issuing those contracts. The proposed changes under CP46 will require companies to reissue a very large number of contracts to policyholders and explanations of the changes in terms and conditions due to Solvency II. CP46 implies that own funds are being considered from a run-off perspective. The CFO Forum believes that a going concern basis is more appropriate. The overall tone of CP46 seems to imply that own funds are being considered from a run-off perspective, which is inconsistent with the transfer concept in the Directive. The CFO Forum considers that since the Solvency II measurement basis is to transfer liabilities to another entity, a going concern basis is most appropriate. The going concern basis applies both before and after significant financial shocks since the acquirer in the transfer concept would be a going concern. Maturity of capital instrument should not be related to the insurer's liabilities. Some life insurance liabilities are very long-dated, such that the minimum maturity can be 50 years or more. Paragraph 3.73 states that the duration of the capital instrument is defined as the first contractual possibility of repayment. In other words, a hybrid Tier 1 instrument would need a call date in, say 50 years or thereafter (versus 5-10 years today), another reasons that effectively means that no marketable hybrid Tier 1 instruments will exist if it needs to	See refs 3.1.3 and 3.2

			be constructed according to CP 46. We suggest to delete paragraph 3.76 as the idea to link the minimum "duration" of certain own funds items to the longest dated liability is very blunt. The relevant liability may be negligible compared to total liabilities, but would still determine the minimum term. We are of the view that a regulatory lock-in is fully sufficient to address CEIOPS' concerns. There is a lack of clarity on group implications in CP46. These should be considered throughout.	
11.			Confidentially comment deleted	
12.	CRO Forum	General Comment	46.A Requirements for Tier1 capital are more restrictive than those agreed in the Directive (priority: very high) Overall, the CRO Forum believes that the requirements regarding Tier 1 capital, both in terms of limits (Tier1 and Tier2) and criteria for eligibility are more restrictive than specified in the Directive/Level 1 text. We agree that there is a need to provide some more details regarding implementation, however these implementing measures should not go beyond what is agreed upon in the Directive. The CP continues the trend noticeable throughout the consultation process with regard to the components of capital. It seeks to largely restrict regulatory capital to ordinary shares and retained earnings and ignores the usefulness of hybrid capital instruments: 46.B Usefulness of hybrid capital instruments is largely ignored (priority: very high) Hybrid capital instruments have performed in line with expectations during the recent crisis and have been essential for the preservation of insurance companies' regulatory solvency. The curtailment of the use of hybrid capital instruments would prevent them supporting regulatory solvency in future crises.	See refs 3.1.1, 3.1.2 and 3.1.4

			In its desire to make capital instruments as equity-like as possible, the CP proposes requirements which would put investors in hybrid capital instruments in a worse position than ordinary shareholders, as the instruments contemplated by the CP would have all the downside risk of ordinary shares, without the upside potential of an investment in shares and without the management control conferred by share ownership. We recommend that the requirements are reconsidered taking into account the marketability of those instruments. 46.C Maturity of capital instrument should not be directly related to the insurer's liabilities (priority: high) The discussion on the Tiers apparently view own funds as an additional amount of assets backing the technical provisions and as a result defines the sufficiency of for example Tier 1 capital in relation to matching the liability durations. We do not agree as we believe the purpose of available surplus is to have a buffer in case of deterioration, on top of the amount of assets backing insurance liabilities. While we agree that available surplus needs to be available to fully absorb losses on a going concern basis as well as in the case of winding-up, we do not interpret this as a requirement that Tier 1 capital should have a duration equal to the longest dated insurance liability. There should not be a problem if the liabilities are running off at least as fast as the capital matures. Given the nature of capital backing surplus, and the general requirement on overall duration, we believe that an approach for tier 1 based on the longest duration liability is overly conservative, and would likely be impractical in terms of the capital markets ability to provide such long dated instruments. We suggest that	

			using the average weighted liability maturity, and 10 year minimum would be sufficient specific conditions for tier one capital. As an example to illustrate our view: Some life insurance liabilities are very long-dated, such that the minimum maturity can be 50 years or more. As currently written, the CP would require finding a hybrid tier 1 with a call date in 50 years, which is effectively not marketable instrument. 46.D Concept of grandfathering is currently missing: should be adequately reflected in the Implementing Measures (priority: very high) The CRO Forum note that the concept of grandfathering is not addressed in this paper, but should be adequately reflected in the Implementing Measures. There is no indication as to whether currently allowable hybrid capital would be grandfathered. We believe that if eligible elements were compliant, at the date issued, with the new defined criteria in the Level2 measures, they should continue to be recognised as eligible under Solvency II. In addition, given the fundamental changes proposed regarding the treatment of Own Fund, the transition arrangements are vital, especially for grandfathering. 46.E Book-value method not applicable (priority: high) The CRO Forum note that the paper in several places discusses elements from the perspective of book-value accounting and book value balance sheets. Given that Solvency II is designed to have an economic market consistent basis, we believe the discussion and analysis should always be based applying a market value balance sheet; we believe that exclusions introduced (exclusion of tax assets and certain elements of difference between the best estimate and technical provisions) are inconsistent with a sound	See ref 3.1.6

			market consistent valuation. 46.F Cross sector consistency for the determination of eligible own funds is desirable (priority: very high) The CRO Forum share the paper's view that is it is important to achieve as much as possible a level playing field between financial institutions. Thus we promote: (i) the application of the same economic risk-based regulatory framework for Pension Fund business, and (ii) to achieve at the time of the Solvency II implementation in 2012 – while recognizing the business models specificities (of banks and insurers) - a convergence based on an economic risk-based regime for the determination of eligible own fund and required capital for banks and insurance.	
13.	Danish Insurance Association	General Comment	There is a need for a more clear description of tiers 1 – 3, especially when it comes to the treatment of hybrid capital.	Noted.
14.	Danish Insurance Association	General Comment	See 13	Noted.
15.	DENMARK: Codan Forsikring A/S (10529638)	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted.
16.	DIMA (Dublin International Insurance & Management	General Comment	DIMA welcomes the opportunity to comment on this paper. Comments on this paper may not necessarily have been made in conjunction with other consultation papers issued by CEIOPS.	Noted.
17.	European	General	European Union member firms of Deloitte Touche Tohmatsu are	Noted.

	Union member firms of Deloitte Touche To	Comment	currently involved in the Level 2 Impact Assessment of Solvency II conducted by the European Commission. "Own funds – Classification and eligibility" covers policy issues and options dealt with by this impact assessment. As a consequence, we have restricted our comments to those areas where there is no overlap with the issues addressed in the Impact Assessment.	
18.	FFSA	General Comment	Introduction We welcome the efforts from CEIOPS to attempt to clarify the definition and structure of own funds in the context of the level 2 implementing measures for the Solvency II Directive. Whilst we believe that the current proposal provides a reasonable framework for Tier 2 and Tier 3, it appears too restrictive for Tier 1. This draft proposal comes across as the sum of the requirements from many regulators for Tier 1 eligibility. Also, we would strongly favour a proposal that deals simultaneously with the grandfathering rules (refer to 3.6 answer) since a two step approach will generate uncertainty for insurers who have issued hybrid capital instruments. The introduction of additional limits at the Tier 1, Tier 2 and Tier 3 levels go beyond the letter and the spirit of the solvency II European Directive. Hybrid instruments One of the core objectives of the Solvency II Directive is the creation of a more harmonised regulatory playing field for insurers. In particular, the current proposal from CEIOPS on what constitutes hybrid Tier 1 capital is misaligned with the CEBS proposal for Tier 1 bank hybrids, which may create a competitive disadvantage for insurers relative to bancassurers. The proposal appears to ignore the developments of hybrid securities structures since limited differentiation across marketable	See refs 3.1.1, 3.1.2 and 3.1.4

			hybrid securities would be made under the proposed regime and most hybrids would fall in the Tier 2 bucket, including "banking style" Tier 1 hybrids. Our recommendation is the creation of sub-Tiering at Tier 1 level to operate such differentiation. Disallowing any incentive to redeem and linking the duration to that of the longest liability is strongly penalising the insurance sector. We appreciate that within the proposed framework, insurers will have certainty from the issue date on the regulatory treatment of the instruments and will not face unexpected changes in regulatory treatment during the life of the instrument due to the supervisor's evolving point of view of what requirements should be met to qualify as Tier 1, Tier 2 or Tier 3 instruments. Finally, we want to stress that insurance hybrids have performed in line with expectations during the recent crisis. This would, in our opinion, warrant a greater benefit to existing Tier 1 structures than in the current draft proposal. Eligibility and classification We propose to amend the following concepts : • Define the maturity of the Tier I hybrid instruments with due regards to current market and regulatory practice. In this context we think that a call date with moderate step-up cannot be considered as the effective maturity date. • The ranking of the instrument between the various tiers should not be related to the insurance liability maturity. • The proportion of tier 1, 2 and 3 to be recognised in eligible own funds for the SCR and MCR should not be stricter than the one indicated in the level 1 of the Directive, ie level 1 > level 2 > level 3.	

			- We recommend to change the requirement that all Tier 1 capital instruments rank in parity with ordinary shares in liquidation to a less restrictive subordination requirement. - Automatic activation of the instrument loss absorbency and cash flow protection mechanisms should only occur when the undertaking is in breach of the MCR, not the SCR. - Beside conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that conversion into equity with the possibility of a later write up and non-cumulative payment deferral (principal or coupon) and in certain circumstances deferral with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis Finally, we do not understand the principle to consider only the net financing provided by the investor as eligible own funds, where an investor subscribes for capital in an undertaking and at the same time that undertaking has provided financing to the investor. Eligibility of other own funds Some items are explicitly excluded from own funds or Tier one, such as deferred taxes, specific statutory or legal reserves, profit at inception, difference in technical reserves between best estimate and the amount to be paid to policyholders in the case of winding up. We would want to point that all assets and liabilities will be already calculated and assessed from an economic perspective as opposed to an accounting perspective. Therefore, we consider that the proposal to reduce the capital base by excluding specific accounting reserves or deferred tax assets is neither appropriate	

			nor necessary. Approval processes In order to improve the transparency of supervisory approval practices, that should also help ensure harmonisation, we recommend that deadlines be fixed for the supervisor to provide with an answer (e.g. 15 days). Also, issuing a capital instrument is an expensive and burdensome process. We recommend implementing a pre-approval procedure with the supervisor that could be based, for example, on draft prospectus.	
19.	FRIENDS PROVIDENT	General Comment	The paper includes proposals to restrict the use of lower tier capital beyond the level prescribed in the Directive, and by not allowing payment of dividends on tier 1 capital once the SCR is breached. However, these actions will make shares in insurance companies less attractive, thereby making it more difficult to raise capital, particularly in circumstances where there is a conceivable risk that the company could breach its SCR. This will have an adverse effect on policyholder security rather than the intended improvement. Less absorbent types of capital will become unattractive if the proposals are implemented, since in stress scenarios where available capital is relatively small, the capital provided by these forms of capital may fall below their face value, making them more costly to service per unit of capital provided than more absorbent forms of capital. This would have an adverse effect on policyholders as the additional cost of capital will be passed on in premiums. However, the additional protection provided is not significant. The lower tier capital provides protection by ranking below policyholder liabilities in default and often postponement or deferment of servicing costs. The limits on contribution of lower tier capital to meeting capital requirements in the Directive offer a better balance from the	Noted.

			policyholder's point of view. It allows for adequate protection, while not unnecessarily restricting the ability of companies to raise further capital if required. The treatment of instruments with interest step-ups is unfair, in particular compared with the treatment of dated instruments. No account is taken of the date at which the step-up first occurs or the ability of the regulator (not available with dated stock) to prevent repayment (see comments on 3.191 and 3.201 below)	
20.	German Insurance Association – Gesamtverb and der D	General Comment	Introductory remarks: GDV appreciates CEIOPS's effort regarding the implementing measures and likes to comment on this consultation paper. In general, GDV supports the detailed comment of CEA. Nevertheless, the GDV highlights the most important issues for the German market based on CEIOPS' advice in the blue boxes. It should be noted that the comments in this document should be considered in the context of other publications on own funds by the GDV and CEA. The industry's positions papers on own funds of the past two years have been the basis for commenting this CP. The rational of some detailed comments is explained in more details in these publications. In the general comments to CP 29 we outlined again principles of own funds and their eligibility under Solvency II. The preparatory work of the industry and the discussions we had with the CEIOPS capital subgroup and other representatives of supervisory authorities should be reflected in the final CEIOPS paper. We are concerned that the advice has been driven to an excessive degree by failings in the banking sector. The paper seeks to eradicate a significant range of instruments which in the insurance sector can provide effective and efficient protection for policyholders. Moving the insurance sector towards a much higher dependency on equity capital will substantially increase the cost of	

			doing insurance business in Europe without delivering material economic benefit and will increase the cost of buying insurance for policyholders. In particular, fixed-income investors would be cut off. Such a reduction of the diversification of the investor base is not desirable. We strongly believe that micro-regulation of own funds at entity level will have to be balanced appropriately with capital requirements and the other qualitative provisions on the one hand and with marketability issues and a macro-economic view on capitalising insurance markets on the other hand, both on the basis of the approaches and principles of the agreed Level I text. The economic concept of own funds in the Solvency II directive is a core element the future regulatory system for insurers and especially for insurance groups. Indeed, the Level II advice on own funds is important to maintain a consistent framework. We feel not certain that all members of CEIOPS have acknowledged the ultimate relevance of not failing in doing so, so far. When setting the eligibility and classification of own funds, differences in the business models and supervisory frameworks of the banking sector and the insurance sector need to be considered. We strongly believe that a level playing field on capital markets needs to be ensured between insurers and other capital instruments providers. To that extent, we would expect that the definition of hybrid instruments for the insurance sector is at least the same as the one set for the banking sector. A comparison of this draft CEIOPS advice with what is currently being discussed as part of the CRD review will show that this is far from being the case. The particularities of the insurers' business model need to be taken	

			into account when setting the eligibility limits. In contrast to other financial services providers, insurers are characterised by an inversion to cost/revenue cycles. In financial terms this means that insurers are primarily funded by policyholders' premiums, making them less exposed to liquidity risk and to any problems accessing credit markets which were at the origin of the recent financial turmoil. We would expect limits for the eligibility of own funds to reflect this difference. Moreover, the conceptual differences between the banking and the insurance supervisory frameworks need also to be considered when comparing the eligibility limits between the two sectors. The differences in the measurement basis need to be appropriately assessed. Also, the fact that Solvency II introduces many layers of protection and a ladder of intervention between the MCR and the SCR to ensure that obligations towards policyholders are met is a structural difference that needs to taken into account. For this reasons also we would expect limits for the eligibility of own funds to reflect this difference and to be less restrictive than that of the banking sector. We strongly urge CEIOPS not to depart from the principles in the Framework Directive. There is no rationale or evidence why limits and definitions for each one of the tiers have been made more conservative. Requiring more than half of own funds in tier 1 is unviable with the currently proposed definitions for tiers. Excluding hybrid instruments from tier 1 will makes capital much more expensive for insurers and their policyholders. In particular, disallowing any incentive to redeem and mechanically linking the duration to that of the longest liability is strongly penalising the insurance sector which has shown strong resistance to the financial	

			turmoil. Instead, the duration of liabilities should be taken into account as part of the Pillar II supervisory review and the ORSA as it goes beyond the one year time horizon set for Solvency II regulatory capital requirements. Beside conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that conversion into equity with the possibility of a later write up and non-cumulative payment deferral (principal or coupon) and deferral with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis. Hybrid capital instruments should qualify for tier 1 in normal situations. We do not believe that hybrid capital should only qualify for tier 1 in exceptional circumstances. It is crucial that tiering criteria are assessed jointly. Our feeling is that in the CEIOPS paper the two characteristics permanent availability and subordination and the three features as well as the duration to be considered are regarded as a list of six isolated criteria. This is not in line with an economic view of the capital instrument which combines in itself different design options. There might be features that are fully fulfilled whereas other features do not meet the highest standard. We think that the tiering criteria have to be assessed jointly and not in a separate manner. Balancing features of capital instruments is also known from rating agencies. The Level I text support this view in differentiating between main characteristics and additional features. The approach in QIS4 did not reflect the different importance and the interactions of all tiering criteria and was not based on the current Level I text. The advice by CEIOPS seems not to reflect sufficiently the changes	See refs 3.1.1, 3.1.2 and 3.1.4

			made in the Level I text. Setting automatic trigger points at the level of the SCR will make instruments unsalable. Instead, automatic triggers should be set at the level of the MCR where ultimate supervisory actions are possible. Between the SCR and MCR, supervisory powers should be proportionate and escalating commensurate with the level of breach of the solvency control level, with triggers possibly being activated when this has been defined as part of the recovery plan submitted by the undertaking. Although it was expected under Level 2, there is no advice on grandfathering. Grandfathering will be crucial once the new solvency regime is in place, as this will give stability in the capital market. If grandfathering arrangements were not available under level 2, we would expect that some insurers, depending on the detail of the implementing measures, may need to raise new capital just because of non-recognition or down-grading of existing capital instruments. This could cause turbulence in the financial markets and would increase costs of capital significantly, especially in current conditions. For these reasons, it is crucial that all instruments issued before the date when the Solvency II regime comes into force, are covered by appropriate grandfathering rules. Building the assessment of the eligibility of own funds based national reporting requirements when these do not reflect economic values is wrong. Some items are explicitly excluded from own funds or Tier 1, such as certain equalisation reserves, deferred taxes, other specific statutory or legal reserves, profit at inception, between best estimate policyholders' liabilities and the amount to be paid to policyholders in the case of winding up. In a Solvency II balance sheet, all assets and liabilities will be already calculated	See refs 2.2, 3.1.2, 3.1.3, 3.1.4, 3.1.6 and 3.2

			and assessed from an economic perspective as opposed to an accounting perspective. Assets and liabilities which are not valued under a Solvency II market consistent balance sheet fall under the "excess of assets over liabilities" which by construction is Tier 1 capital. The only exception from that could be derived from adjustments concerning eligible, if any, due to ring-fenced funds. An example for such or similar restrictions might be certain specific equalisation reserves with restricted assets that can only be used to cover losses from particular risks to a certain extent. We are strongly concerned and disagree with what CEIOPS calls the "winding-up gap" which is probably based on a misunderstanding of what the Framework Directive is trying to achieve. The requirement however seems to be implying that the Solvency II policyholder liabilities are not reflecting the amount at which policyholder liabilities would have to be settled in the case of a winding up. This is misleading and probably based on a misunderstanding of what article 74 of the Framework Directive is trying to achieve. We do not understand how CEIOPS considers policyholders' liabilities under a winding basis when it acknowledges that this is clearly contradictory to the Framework Directive. There is no evidence why the value of policyholders' liabilities would be higher in a winding-up case than in ongoing concern basis. The risk of lapses and surrenders being higher than anticipated in a winding-up case is captured by the SCR lapse risk module. Assets and liabilities should be valued at their market consistent basis under Solvency II. Any risks not included in the market consistent value of assets and liabilities should be covered up to the 99.5% VaR by the SCR.	See refs 2.2, 3.1.2, 3.1.3, 3.1.4 and 3.2
21.	GROUPAMA	General Comment	Groupama questions the treatment suggested for the difference between Best Estimate and the amount to be paid in the case of winding-up. We understand this value to be the Best Estimate	See refs 3.1.3 and 3.2

			calculated on a run-off basis. The difference between this "run-off" Best Estimate and the central one should be classified as Tier 3. We question this point: - As this amount is included in the difference between assets and liabilities, the Directive states that it is basic own funds. - It is possible that due to cost reduction, the run-off Best Estimate could be lower than the central one: it would lead to Tier 3 own funds being in the negative. - The concept of "run-off" Best Estimate is not consistent with the spirit of the Directive and a transfer value of technical provisions. - This run-off value could be very onerous to calculate, and there is no connection with the day to day management of the company.	
			For those reasons we recommend that no reference is made to this technical provision on "winding up". (3.100)	See refs 2.2, 3.1.2, 3.1.3, 3.1.4 and 3.2
			We would like to emphasize that the thresholds suggested by CEIOPS (50% for Tier 1, 15% for Tier 3) is inconsistent with the text of the Directive. In our view CEIOPS does not give sufficient explanation when it suggests lower thresholds than the Level 1 text for Tiers 2 and 3. (3.174)	See ref 3.1.2
			We do not understand why liabilities shorter than 3 years should be excluded from the eligible elements as these are capital elements that might be used to face any one-year event. (3.185)	
			We are concerned about CEIOPS' suggestion on "net financing". We do not think that we should consider investment in capital instruments (as equities or bonds) to be covered by this net financing approach and we think it should be limited to loans only.	See refs 3.1.3 and 3.2

			This would be an adverse change compared to the current situation. It should be borne in mind that investments held by insurance companies back technical liabilities, contrary to the banking sector: those assets should not be considered to be financing. (3.191) No reference is made to grandfathering. We are of the view that special attention should be paid to capital instruments issued before Solvency II comes into force. Capital instruments admitted in Tier 1 should be allowed until their maturity date or the exercise of the call. (3.6) We do not agree with CEIOPS' restriction on Tier 1 instruments, which prohibits payment of the coupon when the SCR is breached. We question putting the trigger point at the SCR level. Supervisors and the undertaking can take other adequate measures to protect policyholders when the SCR is breached. Not paying the coupon could be one such solution. This should be automatic only in the case of an MCR breach. (3.170) Finally, the CP requirements for subordinated liabilities are very restrictive and are not included in current capital instruments: - For instance, Tiers 1 or 2 should include capital instruments where redemption is linked to the undertaking's solvency position, and not necessarily the ability to absorb losses. - Furthermore, we question the fact that there should be no incentive to redeem debt as step-ups. It is to be noted that when facing stress scenarios certain insurers have recently decided not to call their transactions despite the presence of step-ups. Step-ups greatly increase the marketability of securities without reducing the efficiency of the protection when needed, as the recent examples have shown. We would recommend allowing for step-ups (with similar limits to those in the banking sector, for instance).	

			This could lead to undertakings having severe difficulties in obtaining financing. We suggest regarding eligible debt that IFRS principles be adhered to. (3.191)	
22.	Groupe Consultatif	General Comment	The subject matter of this Consultative Paper is of interest to actuaries, although not strictly a professional actuarial matter. The Groupe does not disagree with the CEIOPS analysis of the lessons from the crisis and considers that subject to consistency with the economic balance sheet concept underlying Solvency II the overall framework of allowance for own funds is a matter for the authorities having regard both to considerations of policyholder protection and to the efficient functioning of a competitive insurance market. The Groupe does however strongly believes that considerable care is required as regards transition to any regime which requires additional high quality capital either to be subscribed by investors or retained from earnings. This is particularly the case in the aftermath of the worst financial crisis most of us ever have known. We believe that transition arrangements should be specified as part of implementing measures and that sufficient flexibility should be retained to respond to any sustained weakness of capital markets or of insurer earnings. The Solvency II starts from the idea of the Total Balance Sheet Approach. We understand this to mean that instead of implicit and non-transparent margins here and there the capital requirement and the amount of capital should be explicit, clear and transparent for the user of the information. On CP 46 however there seem to be areas where things are moving to the other direction. We cannot help thinking that the tightening of the criteria of especially Tier 1 capital might not be in line with the market oriented Total Balance Sheet Approach.	

			We would like to have more motivation to this. Insofar as there is evidence that certain practices derived earlier from the Framework Directive and tested for example in QIS4 need to be modified that can of course be done. We however think the motivation presented in CP46 and the impact analysis performed does not give strong motivation for the tightening of the rules. Therefore we generally think that in the absence of a more profound analysis, policyholder protection does not need on level 2 measures tightening what was anticipated based on the Framework Directive and on QIS4. In January 2009, CEIOPS published a survey on equalisation provisions in non-life insurance in the European Economic Area. According to this survey the equalisation provisions are widely used in the EEA and the amounts of equalisation provisions are substantial in many countries: the total amount of equalisation provisions reported was 53 billion Euros representing approximately 19 percent in proportion to the net earned premiums. Therefore equalisation provisions are substantial items in the balance sheet of non-life insurance undertakings. According to the present Non-Life Insurance Directives the equalisation provision is not a part of the solvency margin, but it is a part of the technical provision. In Solvency II at least in the QIS4 a large majority of Member States considered equalisation provisions to be own fund items. But in QIS4 there were divergent opinions how to treat equalisation provisions as own funds: • the classification of the equalisation provision as Tier 1 or Tier 2 in the eligible own funds • the amount of the equalisation provision accepted as own funds: the full amount, the amount deducted by the	

			deferred taxes or some other alternative. One of the main objectives in Solvency II is to develop a harmonised solvency supervision system in EU. The advice in CP 46 concerning the equalisation provision is insufficient for the harmonised treatment of the equalisation provision. In CP 46 in paragraph 3.195 it was said that "Excluded from Tier 1 excess of assets over liabilities are: Reserves, the use of which is restricted, such as certain equalisation reserves, legal reserves and statutory reserves, which should only be eligible for inclusion in own funds in relation to the risks they cover. the reserves." On the other hand in the lists of Tier 2 or Tier 3 own fund items in CP 46 equalisation reserves were not mentioned. But according to Articles 87, 93 and 94 (as it is also noticed in paragraph 3.92) the excess of assets over liabilities shall be classified as basic own funds and these shall be classified as Tier 1-3 depending on how they can absorb losses on a going concern basis or in the case of winding-up. Therefore we see that it is essential to have further advice for the treatment of the equalisation reserves. We further suggest that CEIOPS would take into account in its advice the actual characteristics of the equalisation reserves from the point of a view of policyholders and beneficiaries: • The purpose of the equalisation reserves is often to even out the loss ratio fluctuations over a longer time span. Therefore the equalisation reserves can be used on a going concern basis to fully absorb underwriting losses; • And if the compensations of policyholders and beneficiaries are jeopardised seriously or at least in the case of winding-up the equalisation reserves can usually be used to absorb also other losses than underwriting losses. Therefore we see from the point of a view of policyholders and	See refs 2.2, 3.1.2, 3.1.3, 3.1.4, 3.1.6 and 3.2

			beneficiaries that the equalisation reserves could usually be classified as Tier 1 in the eligible own funds, at least up to the amount of the SCR of the underwriting risk.	
23.	INTERNATIONAL GROUP OF P&I CLUBS	General Comment	The IG believes that in endeavouring to achieve greater certainty of solvency, CEIOPS' proposals mean that the standards set by the Directive are over-ridden and the hurdle for hybrid capital instruments and subordinated loans may be set so high as to prevent any such instruments from being classified as Tier 1 capital.	See refs 3.1.1, 3.1.2 and 3.1.4
24.	International Underwriting Association of London	General Comment	We are concerned that the advice as drafted could require many firms to restructure their capital bases, and the consequential effect this could have on secondary markets. Clearly that might also be undesirable from a macroeconomic viewpoint. These proposals are stricter than outlined in the Framework Directive. (e.g. Min 50% Tier 1 Capital). There is no evidence provided as to why the limits and definitions for each of the tiers have been made more conservative. We also note that no grandfathering arrangements have been suggested in the Consultation Paper, whereas this was something that was included in the Capital Requirements Directive for banks. This might be a useful provision so that insurance companies have time to adjust their balance sheets, and to minimise distortions in secondary markets.	Noted. See resolution 3 for grandfathering.
25.	Investment & Life Assurance Group (ILAG)	General Comment	We believe that there is an attempt in this CP to introduce a solvency assessment carried out assuming the winding up of the insurer. We believe this is based on a flawed interpretation of Article 93. We would state that: 1. Any assessment of solvency on a winding up basis requires a complete reassessment. Technical provisions have to be calculated	See refs 2.2, 3.1.2, 3.1.3, 3.1.4 and 3.2

			on the basis of the minima that can be paid on winding up, the SCR should remove any items that are long term in nature (most of the life underwriting standard formulae as well as the operational risk elements) and expenses need to be provided for the legal costs but ignoring any longer term expenses of running the business. 2. In the UK, apart from friendly societies, it is impractical to wind up a life insurer without first carrying out a transfer of engagements to another provider. All insureds are unsecured creditors requiring agreement to the terms of the winding up and the liquidators are under responsibility of primary legislation to continue the organisation if it can be continued. A transfer of engagements returns all of the capital to the position under CP39 and removes any "winding up gap". 3. Any supervisor would only look upon winding up as very much the last ditch. Customers will lose valuable guaranteed benefits and may be materially worse off due to change in insurability. Winding up is not attractive without a transfer of engagements. 4. The CP is deeply inconsistent with CP40 on risk margins which views the risk margin as being set at a level whereby a provider taking over the liabilities after a transfer of engagements (prior to winding up the insurer) would be happy to take over the risks. We also believe that CEIOPS should be viewing Tier 1 capital as that freely available without let or hindrance after a 1:200 stress. The fact that some hybrid capital forms have not been reduced in value due to the relatively modest impact that 2008 has had on insurers should not be seen as a sign that a real 1:200 event would cause insurers to take full advantage of their powers on hybrid capital.	See refs 3.1.1, 3.1.2 and 3.1.4

26.	KPMG ELLP	General Comment	(a) Our understanding was that implementing measures should cover the specific matters set out in the "Implementing measures" articles of the Level 1 text. There are areas of this CP (for example in relation to the limits applicable to tiers of capital – see 3.48) where CEIOPS seems to be seeking to rewrite the Level 1 text, by proposing more onerous criteria. We do not believe that implementing measures should go beyond what is agreed upon in the Directive. (b) In this regard, we believe the requirements regarding recognition of Tier 1 and Tier 2 capital are more restrictive than those specified in the Level 1 text, which would essentially result in only ordinary shares qualifying as Tier 1 capital. We believe that there should still be flexibility regarding the types of instruments permitted to be included as highest quality Own Funds. Otherwise there is a risk that this could restrict firms' ability to raise lower tiers of capital as a more temporary measure in times of stress (for example, if the parent entity is unable to provide fully paid equity at that time), due to the application of the tiered capital limits. (c) We also note that CEIOPS proposes to introduce duration requirements in relation to own funds. Whilst we agree that there should be a minimum duration, we are concerned about the linkage to the longest dated insurance liability. This is explained further in our response to paragraph 3.70. (d) Both (b) and (c) above would result in the need for a significant restructuring of capital/financing instruments by some companies and groups in the absence of permitted grandfathering arrangements. We would therefore request CEIOPS provide some specific guidance regarding transitional arrangements. This should cover grandfathering and/or early repayment of existing approved capital instruments and implications of any short-term breaches of	Noted. See ref 3.1.2 on duration.

			SCR and/or MCR while refinancing of any instruments that were eligible under Solvency I but not under Solvency II is effected.. (see also our response to 1.6) (e) We agree that the onus should be on insurers' governance and capital management processes to determine the appropriate mix of Own Funds to support the underlying risk of the business, through the insurance cycle and also in time of stress.	
27.	Legal & General Group	General Comment	In the past we have supported CEIOPS proposals that offered insurers greater flexibility in raising capital and at the same time reduced the differences between banks and insurers in respect of capital treatment. However, we are very concerned with the direction that is being taken in this latest CEIOPS advice - creating significant divergence in the definition of own funds between insurance companies and banks. There are areas where such differences are clearly appropriate given the respective businesses of banks and insurers, but we do not believe this should be the case for hybrid capital instruments which are now relatively well understood by investors, rating agencies and local regulators. The use of "bank style" terminology (Tier 1, Tier2 etc) is very confusing given the significant differences between the limits and rules proposed for insurance companies e.g. the closest match for "new" insurance Tier 1 is Bank Core Tier 1. In addition the limits for insurance companies are based on capital requirements whereas the limits for banks are based on available capital or eligible own funds. We would recommend that CEIOPS revisit the bank and insurance definition of capital convergence project in order to eliminate any potential confusion in the market. It is important that the interests of both issuers and investors are taken into account when assessing hybrid capital instruments. Insurers are also key investors in such instruments which serve as an important class of assets used to match various of their	See refs 3.1.1, 3.1.2 and 3.1.4

			liabilities. Insurers as issuers of hybrid capital should benefit from a framework that offers a 'level playing field' across Europe so that they can manage their capital structures efficiently. Ideally a common framework should apply to accommodate banks and insurers so that all issuers including insurers can access a large and liquid pool of investors to achieve an efficient priced source of hybrid capital. Transparent and clear guidelines are important for investors. Bank capital instruments and to a lesser extent insurer capital instruments have established differing segments/asset classes representing the various forms of capital. The proposed framework should offer investors in insurance capital the ability to categorise clearly the different forms of insurance capital into similar asset classes as banks. Investors already compare insurance hybrid capital with bank hybrid capital and as insurers have become more active issuers their hybrid capital has traded in similar tiers to banks. Therefore the implementation of a tiered capital framework is a logical next step. Hybrid capital instruments are an important capital management tool for most financial institutions as evidenced by their relatively extensive use over time albeit more predominantly by banks as evidenced in the recent recapitalisations undertaken globally by large international banks. However, the fact that insurers were not affected in the same way as banks in the recent banking crisis and did not need to resort to recapitalisations and the consequent increased issuance of hybrid capital should not preclude insurers from having equal access to such forms of capital. As investors insurers were fully aware of the performance of hybrid capital instruments over the last 2 years or so providing ongoing loss absorption through suspension of coupon payments in extreme cases as well as a buffer in liquidation for senior creditors.	

			We believe there is a common objective across European financial regulators to see a convergence between forms of hybrid capital in the bank and insurance sectors. Convergence has already been achieved in some jurisdictions and in others where rules for insurance Tier 1 hybrids have yet to be promulgated , insurance issuers have adopted a 'best practice' approach to structuring securities with a view to achieving Tier 1 credit in the future under Solvency II. We believe it is essential that insurers and their regulators have the opportunity to participate in the finalisation of any proposals to ensure that; 1) there is a 'level playing field' between banks and insurers in terms of capital available to them; 2) the relative timing of these proposals and Solvency II does not unfairly leave insurers in a position of uncertainty with regard to their ability to issue hybrid capital; and 3) any rules agreed for the grandfathering of existing instruments are equally applied across banks and insurers. In conclusion, we believe the requirements set by the CEIOPS in this CP in particular, in respect of Tier 1 hybrids are not met by existing instruments. Further, we would not ourselves as investors have any appetite for Tier 1 as envisaged in this CP. This would imply that there would be a strong risk that insurance companies would need to rely only on common equity for Tier 1 purposes which will create very significant distortions i) between banks and insurers until the bank framework was brought in line with insurers and ii) between EU and non-EU insurers. In addition many sources estimate that the equity market alone will not provide the quantum of capital that is required for the	

			recapitalisation of the banking system. Adding any potential future capital requirements by insurance companies will only put additional pressure on share prices and ultimately on the cost of equity for financial institutions. Both banks and insurance companies will NEED to have the ability to access the fixed income markets for part of their regulatory capital requirements. Therefore it is essential to have instruments that are acceptable to fixed income investors i.e. satisfy their requirements for assets that will match the risks of their underlying liabilities.	
28.	Link4 Towarzystwo Ubezpieczeń SA	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted.
29.	Lloyd's	General Comment	Lloyd's welcomes the opportunity to comment on CP46. Our specific comments are set out in detail below. We note that, subsequent to the finalisation of the Framework Directive, CEIOPS has taken into account the events of the financial crisis when arriving at the advice set out in this paper. Although we are appreciative of this, we would note that in general the causes and impacts of the financial crisis have impacted financial sectors in areas other than insurance. In particular, it should be recognised that insurers are not the same as banks and the fundamental differences in the structures of the two industries have been illustrated by the relatively small impact of the financial crisis on insurers. For instance, insurers have been able to withstand the crisis better than banks, because the risk profile is different, not because banks have issued more hybrids. Accordingly, it would be unfortunate if, as a response to the	Noted.

			financial crisis, requirements were put in place with respect to insurers' capital requirements which are unduly onerous and which reduce the ability of EU insurers to compete in the global marketplace, particularly where the requirements as set out in this paper go beyond the provisions of the Framework Directive, recognised as being reasonable and sensible in this respect.	
30.	Moody's Investors Service	General Comment	Moody's supports the objectives of CEIOPS consultation paper CP 46, and the classification of hybrid instruments into different categories dependent on how 'equity like' each hybrid is. As one of the world's leading rating agencies, Moody's has been classifying hybrid instruments for many years and places hybrids into different 'baskets' based upon the hybrid's characteristics with respect to maturity, loss absorbency and ongoing payments. The basket the hybrid receives then influences how the hybrid is treated in the various capital, leverage and coverage metrics Moody's uses when rating an insurer, bank or corporate. Moody's has specific comments on individual paragraphs in the consultation paper, which are detailed below. Some over-arching introductory comments are made here. Firstly, Moody's agrees with CEIOPS that hybrids which receive high equity credit should have high levels of loss absorption on a going-concern and on a gone-concern basis. It is our observation that both issuers and investors value simplified hybrid structures. In particular, standardisation across issuers and industry segments enables such instruments to be transparent and easily understood. It is difficult as an analyst or investor to assess the likelihood of a particular hybrid defaulting or absorbing losses when the features are overly complex or are based on information that is not readily available within the public domain. We note in particular that the current proposals would create hybrid	See refs 3.1.1, 3.1.2 and 3.1.4

			instruments, which in some cases, would have substantially different features to those expected to be issued by European banks following the CEBS-proposed changes. Since Moody's typically classifies hybrids across insurance, banking and corporates in the same way, a hybrid with certain features will receive the same treatment no matter what the issuer type. It is also valuable for investors to know that a hybrid, which receives, for instance, 'Tier 1' treatment for one insurer is similar to a hybrid that would receive 'Tier 1' for another insurer, or indeed a bank. Greater transparency and simplicity of hybrids insures that investors fully understand the risks they are taking. If hybrids are more bespoke or complex, then investors may have difficulty assessing the risks. A final broad comment applying equally to Tier 1 and Tier 2 instruments as detailed in CP46 relates to triggers, which can result in skipped coupon payments, principal write-downs, or other events impacting the default characteristics of the instruments. Moody's observation is that investors prefer triggers that are fairly simplistic in nature and can be easily calculable from public information (such as an insurers' annual reports or quarterly results statements), allowing investors and other third parties to assess proximity to the trigger with some accuracy and timeliness. Triggers based on metrics such as the Solvency Capital Requirement (SCR) coverage mean that the default characteristics of the hybrid are dependent upon a measure that is fairly opaque in its calculation under Solvency II regulations, making it difficult for analysts and investors to accurately predict the likelihood of the trigger being breached	
31.	Munich RE	General Comment	We fully support all of the GDV statements and would like to add the following points:	

			It is very unfortunate that the industry's views and concerns on a stable financing for the insurance sector have not been taken into account. In addition, the general approach of CEIOPS deviates from economic principles as set out in Level I text. The economic approach under Solvency II has to be applied consistently through the calculation of SCR and available own funds. It must not be mixed up with the existing laws and restrictions under national accounting which correspond to non-economic values. At the same time starting from a pure accounting perspective contradicts the idea of an harmonised approach of own funds across Europe, does not create a level playing field and distorts competition in the Single Market. The total balance sheet approach reflects a correct economic view and should therefore be independent of national accounting or taxation rules.	
			Definition of own funds (hybrid capital): CP 46 takes a much more conservative approach to hybrid capital relative to the Solvency II Level I European Directive, previous proposal regarding hybrid capital under QIS 4 as well as the CEBS proposals under CP 27. Instruments that meet the eligibility criteria for Tier 1 would not be readily marketable to capital market investors, either fixed-income hybrid investors or equity investors. In addition, the proposal does not acknowledge the difference in tax treatment across different jurisdictions. Grandfathering is not mentioned, but very important, as issuers cannot change instruments issued in the past in order to adjust them to the new criteria. Grandfathering is needed to avoid significant market cost and disruption. Such grandfathering should be awarded at least until the first call date of the outstanding	See refs 3.1.1, 3.1.2 and 3.1.4

			capital instruments [=> thereafter gradual reduction of eligibility], thus mitigating the cost of buying back. The proposal does not create a level playing field with the banking industry, as banks would have better access to the capital markets, because the CEBS approach is much more investor-friendly.	
32.	NORWAY: Codan Forsikring (Branch Norway) (991 502	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted.
33.	OAC Actuaries and Consultants	General Comment	We believe that there is an attempt in this CP to introduce a solvency assessment carried out assuming the winding up of the insurer. We believe this is based on a flawed interpretation of Article 93. We would state that: 1. Any assessment of solvency on a winding up basis requires a complete reassessment. Technical provisions have to be calculated on the basis of the minima that can be paid on winding up, the SCR should remove any items that are long term in nature (most of the life underwriting standard formulae as well as the operational risk elements) and expenses need to be provided for the legal costs but ignoring any longer term expenses of running the business. 2. In the UK, apart from friendly societies, it is impractical to wind up a life insurer without first carrying out a transfer of engagements to another provider. All policyholders are unsecured creditors requiring agreement to the terms of the winding up and the liquidators are under responsibility of primary legislation to continue the organisation if it can be continued. A transfer of engagements returns all of the capital to the position under CP39 and removes any “winding up gap”.	See refs 2.2, 3.1.2, 3.1.3, 3.1.4, 3.2

			3. Any supervisor would only look upon winding up as very much the last resort. Customers will lose valuable guaranteed benefits and may be materially worse off due to change in insurability. Winding up is not attractive without a transfer of engagements to another insurer. 4. The CP is deeply inconsistent with CP40 on risk margins which views the risk margin as being set at a level whereby a provider taking over the liabilities after a transfer of engagements (prior to winding up the insurer) would be happy to take over the risks. We also believe that CEIOPS should be viewing Tier 1 capital as that freely available without let or hindrance after a 1:200 stress. The fact that some hybrid capital forms have not been reduced in value due to the relatively modest impact that 2008 has had on insurers should not be seen as a sign that a real 1:200 event would cause insurers to take full advantage of their powers on hybrid capital.	See refs 3.1.1, 3.1.2 and 3.1.4
34.	Pearl Group Limited	General Comment	The new requirements are stricter than those proposed by the Level 1 Directive, e.g. in the Directive the Tier 1 assets must make up more than a third of eligible own funds in this paper it is at least 50% and the definition of Tier 1 own funds is stronger than QIS 4. This has overstepped the mark and should revert to be in line with the Directive text. Changing the limits while keeping the QIS 4 own fund definitions would be more appropriate. Combined with the restrictions on tier 1 capital eligibility, the setting of automatic triggers at the level of the SCR will also contribute to the substantial increase of the cost of capital for insurers as this would make instruments extremely unattractive to investors. Whilst firms could have the option to set triggers at the level of the SCR we believe this should not be mandatory. Triggers	Noted. See resolution note 3 on grandfathering.

			should normally be set at the level of the MCR which is the trigger for run off rather than going concern recovery. There is no mention of grandfathering in the CP, which is another great concern. Ensuring grandfathering once the Solvency II regime is implemented will be crucial to avoid any turbulence in the financial markets as the non-recognition of grandfathering would force insurers to raise new capital and significantly increase its cost. We would highlight in this respect that for banks, the current proposal is that any instruments not eligible under the new capital regime but recognised under current national frameworks will be eligible for their current capital treatment for a minimum of 10 years and a maximum of 30 years. We would expect similar rules to apply to the insurance sector. The need for clarity on this issue is very urgent as firms will need time to implement any changes to their capital planning. Finally, we are concerned that the requirements proposed in CP 46 might lead to regulatory arbitrage between the banking and the insurance sectors as CEIOPS' proposals are more onerous than what is suggested in the draft bank Capital Requirements Directive. If adopted as proposed, CP 46 would result in an unlevel market playing field where insurers would be disadvantaged compared to banks. These rules are more restrictive than other financial institutions, e.g. banks, work under and could impact our ability to raise capital. This gives bancassurers a competitive advantage.	
35.	PricewaterhouseCoopers LLP	General Comment	We welcome the opportunity to comment on this CP. We note that the limit structure restrictions proposed for the Level 2 implementing measures are significantly more stringent than the minimum requirements set out in the Level 1 Directive. The CP does not provide sufficient justification as to how CEIOPS has	Noted.

			arrived at the specific limits now proposed and (as set out in paragraph 3.46) the impact assessment has not yet been published. Given the importance of these proposals, and the extent to which they exceed the Directive's minimum requirements, we encourage CEIOPS to publish, as part of the third set of advice, a more detailed justification for its proposals alongside the impact assessment. We are concerned with that the proposal that supervisory approval should be required prior to any redemption of capital instrument may restrict the availability of capital. Whilst prior supervisory approval may be desirable in certain circumstances (e.g. on a proposed early repayment of an instrument by an insurer) the requirement for supervisory approval on all redemptions (including at contractual maturity where repayment would not lead to a breach of MCR or SCR) may limit the willingness of providers of capital to invest in such instruments. We set out our detailed comments on these and a number of other areas under the relevant paragraphs below.	
36.	RBSI	General Comment	We are concerned about the general strengthening of quality of capital requirements beyond the level 1 text for every tier. We are particularly concerned that this paper does not cover the grandfathering proposals, which are clearly quite key to prevent undue market turmoil, and is not consistent with the proposals under the new capital regime for banks. Further we feel it is essential to maintain consistency across financial services sectors (ie- these proposals are significantly stronger than those in the draft bank CRD).	Noted. See resolution note 3 on grandfathering.
37.	ROAM –	General Comment	In overall, ROAM wants to underline that many mutuals insurers are not subject to IFRS, that's why we would appreciate if CEIOPS should give more guidance without make reference on IFRS	

			ROAM is not in favour of classifying the difference between the best estimate and the amount to be paid in case of winding-up (we understand the latter equals the local GAAP technical reserve), as Tier 3. The main reasons are the following: - Since this amount is included in the difference between assets and liabilities, the Level 1 text considers this amount as basic own funds. - It could be very demanding and burdensome to model Best Estimate run-off expenses. Moreover, winding-up technical provisions would probably be lower than on-going technical provisions, if we take into account reduced expenses in the majority of departments (commercial, strategic, financial…). - QIS 4 showed that Best Estimates (which included part of the unrealized gains) were higher than local GAAP technical reserves in the life insurance business. If this amount is disconnected from unrealized capital gains or losses, this will lead to negative values of Tier 3 own funds. - There is a risk that changes in this amount will be considered in the SCR calculation (e.g in the mass lapse risk module) without being recognized in the eligible elements of capital (if the 15% threshold is breached); we wonder whether this statement is consistent. For the reasons mentioned above, we believe this item should be recognised as Tier 1 eligible element of capital. ROAM members have also the following remarks: - We would also like to emphasize that the limits proposed by CEIOPS (50% for Tier 1, 15% for Tier 3) are not consistent with the spirit of the Level 1 text. Additionally, CEIOPS is not providing	See refs 2.2, 3.1.2, 3.1.3, 3.1.4, 3.2 See ref 3.1.2

			satisfactory reasoning for a more restrictive tiering. - We would also note that no explanation is given to exclude liabilities shorter than 3 years from the eligible elements of capital, (this elements should cover events happening within one-year horizon). - We have concerns about CEIOPS proposal on "net financing". Investment in capital instruments (as equities or bonds) should not be covered by the net financing approach and should only be limited to loans. This would be an adverse change compared to the current situation. - No reference is made to grandfathering. We are of the view that special attention should be paid to capital instruments that have been issued before Solvency II enters into force. Finally, the requirements for subordinated liabilities are very restrictive and not in line with current practices in capital instruments. Capital instruments where redemption is linked to the undertaking's solvency position, and not necessarily to their ability to absorb losses should be allowed either in Tier 1 or 2. If this possibility is not allowed, this could lead to severe difficulties to obtain external financing. Especially for mutual insurers for which subordinated liabilities offer an important external financing potential. We suggest eligible debt converge with IFRS principles.	
38.	RSA Insurance Group PLC	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted.
39.	RSA Insurance Ireland Ltd	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted.
40.	RSA\32\45\	General	There is much discussion around what will and will not count as Tier	Noted.

	32Sun Insurance Office Ltd.	Comment	1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	
41.			Confidential comment deleted	
42.			Confidential comment deleted	
43.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	General Comment	There is much discussion around what will and will not count as Tier 1 capital. However, given the onerous conditions, there will be no Tier 1 eligible instruments that investors will hold other than equity.	Noted.
44.	UNESPA (Association of Spanish Insurers)	General Comment	Introductory remarks: UNESPA (Association of Spanish Insurers and Reinsurers) appreciates the opportunity to analyze and comment on Consultation Paper 46 about Own Funds – Classification and Eligibility UNESPA is the representative body of more than 250 private insurers and reinsurers that stand for approximately the 96% of Spanish insurance market. Spanish Insurers and reinsurers generate premium income of more than € 55 bn, directly employ 60.000 people and invest more than € 400 bn in the economy. The comments expresed in this response represent the UNESPA´s views at this stage of the project. As our develops, these views may evolve depending in particular, on other elements of the framework which are not yet fixed. CEIOPS must not depart from the principles in the framework directive: Own funds classification and eligibility should be based on a pragmatic criteria avoiding complexity and inflexibility. The eligibility of own funds to cover the MCR and SCR should consider limits related to both, quality and quantity of own funds,	Noted.

			but in a global manner, and taking into account also that their ultimate objective is to absorb losses that could emerge in a prudential temporal context. In this sense, we believe that the proposed development of T1, T2 and T3 should be simplified and made more flexible, and be based on a pragmatic approach, without forgetting the prudential criteria. Limits to own funds classification and eligibility should be coherent with the Framework Directive and existent insurance industry own funds. In relation to CEIOPS proposed limits, we understand that the proposed limits at Level 1 (Article 98) should be maintained and in any case, an analysis should be accomplished, showing the real impact that this proposal will have in the current economic environment and in the insurance industry, considering both prudential and competitiveness criteria. Additionally, we understand that these limits should be indexed to the minimum capital requirements (MCR), in which it is assumed that both, their quality and quantity, is the minimum needed to continue in business, and from where the supervisory capacity of intervention is immediate. Own Funds objective is to absorb potential loss, not to cover liabilities which are supposed to be covered by assets, so we disagree with the relation between liabilities duration and capital duration. We understand that is necessary to assure a guarantee period for the maturity date of the capital duration, but if we consider that the capacity of undertakings to generate own funds is between 1-3 year, the periods proposed by CEIOPS are overstating. CEIOPS must not depart from the principles in the framework directive: We consider that the excess of assets over liabilities valued under an economic criteria, are own funds with capacity to	

			absorb losses (including deferred taxes, goodwill, etc). Assets and liabilities valued at their market consistent basis under Solvency II (according with article 74), highlight the capacity of the assets to cover the liabilities, so the excess of assets over liabilities, considers under economic principles (according also with article 87) as own funds, should be aimed to absorb the potential loss calculated in SCR according to the risks assumed by the undertakings. CEIOPS should review certain restrictions on equity instruments to be considered as Tier 1 capital, in order to avoid crossectorial inconsistencies.	
45.	XL Capital Ltd	General Comment	We are concerned by the proposals in CP 46 which would restrict Tier 1 capital to ordinary shares and retained earnings, which in turn, would relegate to Tier 2 a range of instruments with proven loss absorbing capacity. We are also concerned that the change to limits for coverage of the SCR (a minimum of 50% by Tier 1 and a maximum of somewhere in the range between 5% and 25% by Tier 3) and MCR (a minimum of 80% by Tier 1) are stricter than the minimum levels set out in Article 98 of the framework directive (respectively one third, one third and one half) and will impose additional requirements.	See ref 3.1.2
46.	UBS	1.	We think the proposed rules set an unnecessarily high standard for insurance groups, particularly when compared with the requirements imposed for the banking industry, both within Europe and globally. - Generally, the banking sector is systemically most important	Noted.

			to a well functioning national economy and should be under the highest capital requirements, both as to quality (ie. loss absorption) and quantity, relative to other sectors of an economy. On the other hand, few insurance companies fit within the category of systemically important to the function of an economy, accordingly, placing the most onerous capital requirements or imposing conditions which restrict capital access to such companies seems unnecessary. - Unlike banks, insurers market few products that require immediate liquidity. Faced with financial difficulties an insurer will cease to write new business; however, that does not result in a significant outflow of funds. Many of the companies that go into 'run-off' do not become insolvent. This would suggest that on a like-for-like basis, insurers need a lower proportion of capital that can absorb losses in an ongoing business. - There is little point designing capital instruments that no one wants to buy. Many of the investors buying long-dated debt are seeking to match specific liabilities and there is limited appetite for instruments that can mutate. Failure to recognise this will ultimately result in a fresh round of dysfunctions. - There is a double negative with the proposals made by CEIOPS; first, the limits imposed on insurers are more onerous compared to the level 1 text, and secondly, the features are materially more onerous than any other requirements imposed by any regulator in the market for tier 1 qualifying capital Any proposed guidelines produced by CEIOPS should also enable capital issuance via a consolidated SPV; this will ensure that differing tax regimes within Europe do not place some insurers at a competitive disadvantage compared to others. Finally, we would welcome a public hearing to discuss the CEIOPS	

			proposals in the near future, in the same way that the EC and CEBS have done in relation to their consultation on the definition of bank tier 1 capital.	
47.	Munich RE	1.3.	Advice on the issue of "ring-fenced funds" is highly desirable. The QIS4 specifications revealed some unclarity as regards undertakings on dealing with this issue. Postponing it to the 3rd wave risks inconsistency with the other advice given in the 1st wave (especially as regards ancillary own funds) and the 2nd wave (in particular with this consultation paper).	Noted.
48.	OAC Actuaries and Consultants	1.3.	Agreed it seems logical to deal with both classification and eligibility together	Noted.
49.	PricewaterhouseCoopers LLP	1.3.	We concur that it seems logical to deal with both classification and eligibility together.	Noted.
50.	Association of British Insurers	1.4.	It would be helpful to get clarity on ring-fenced funds in the next set of consultation papers.	Noted.
51.	CEA, ECO-SLV-09-441	1.4.	Advice on the issue of "ring fenced funds" is highly desirable. Feedback on QIS4 indicated that it was unclear to undertakings how to deal with this issue. By postponing it to the 3rd wave there is a risk of getting inconsistencies with the advices of the 1st wave (e.g. with CP on ancillary own funds) and the 2nd wave (in particular to this consultation paper). A proper overall impact assessment of the implementing measures on own funds would have to take into account the treatment of "ring-fenced funds" as well.	Noted. See ref 1.4
52.	CFO	1.4.	Guidance is required on the treatment of "ring fenced funds" in the	Noted. See ref 1.4

			level 2 implementing measures. Guidance on the treatment of "ring fenced funds" is not included in the level 2 implementing measures. As the QIS4 specifications were not clear on how undertakings should deal with this issue, postponing it to level 3 is not appropriate. We recommend that further guidance be provided as part of level 2.	
53.	German Insurance Association – Gesamtverb and der D	1.4.	Issue of "ring-fenced funds" has to be adressed Advice on the issue of "ring-fenced funds" is highly desirable. Feedback on QIS4 indicated that it was unclear to undertakings how to deal with this issue. By postponing it to the 3rd wave there is a risk of getting inconsistencies with the advices of the 1st wave (e.g. with CP on ancillary own funds) and the 2nd wave (in particular to this consultation paper). A proper overall impact assessment of the implementing measures on own funds would have to take into account the treatment of "ring-fenced funds" as well.	Noted. See ref 1.4
54.	KPMG ELLP	1.4.	(a) We agree that guidance on ring-fenced funds will be important, especially as regards both fungibility and transferability of capital in both a solo entity and group context. (b) In particular, we hope this guidance will address the extent to which each and every separate ring-fenced fund will be required to meet its own notional SCR requirement. In this respect we note that CP55 (paragraph 3.38) envisages that notional non-life and life SCRs will be required to assess the application of the MCR corridor, but that these will not constitute a capital requirement. This seems to suggest that any notional SCR applicable to a ring-fenced fund may be able to be covered by other funds within the (re)insurance undertaking. However, we believe further consideration of this	Noted. See ref 1.4 Noted.

			matter is required.	
55.	OAC Actuaries and Consultants	1.4.	It would be helpful to consider the foreseen implementing measure for ring fenced funds together with groups aspects	Noted. See ref 1.4
56.	Lloyd's	1.5.	We consider that CEIOPS' advice is too heavily influenced by the impact of the financial crisis on the banking sector and takes insufficient account of differences between banking and insurance. CP 46 therefore makes proposals that depart from the principles of the Framework Directive and that will be damaging for the competitiveness of the European insurance sector.	Noted
57.	OAC Actuaries and Consultants	1.5.	Whilst it is acknowledged that learning from the crisis is critical, it should not result in an excessively cautious approach.	Noted.
58.	PricewaterhouseCoopers LLP	1.5.	Whilst it is acknowledged that learning from the crisis is critical, it should not result in an excessively cautious approach and specific justification should be provided to support any proposals resulting from the crisis.	Noted.
59.	CRO Forum	1.6.	Given the fundamental changes proposed regarding the treatment of Own Fund, the transition arrangements are vital, especially grandfathering.	Noted.
60.	KPMG ELLP	1.6.	We believe that transitional arrangements will be a matter of some concern to (re)insurance undertakings and insurance groups. As explained in our general comments above, the proposals in this CP could lead to items that are currently eligible to be treated as regulatory capital under Solvency I becoming ineligible for Own Funds treatment (or to be classified as a lower tier of capital) under Solvency II. Affected (re)insurance undertakings and/or insurance	Noted.

			groups will therefore need to understand the implications for them on first application of Solvency II. If there are no grandfathering arrangements of any sort, this would result in the need for a significant restructuring of capital/financing instruments across a significant proportion of the industry, with consequential cost implications. We understand that CEIOPS may not wish to see existing instruments grandfathered and treated as Own Funds for a significant duration, as this would result in such entities/groups potentially offering a lower level of capital protection than those whose Own Funds fully meet Solvency II standards. However, neither should it want to see a large number of SCR/MCR breaches on Solvency II implementation date, due to the lack of transitional provisions in this area. In this regard, we also note that supervisory approval is likely to be required to enable existing capital instruments to be repaid/amended to meet the new requirements. We would therefore request CEIOPS provide some specific guidance regarding transitional arrangements. This should cover grandfathering and/or early repayment of existing approved capital instruments and implications of any short-term breaches of SCR and/or MCR while refinancing of any instruments that were eligible under Solvency I but not under Solvency II is effected.	
61.	Legal & General Group	1.6.	One should also not underestimate the impact these proposed changes will have on the secondary market for hybrid Tier 1 securities. If the market perceives that existing Tier 1 issues are more debt like than future Tier 1 issues once the rules are in place, then existing Tier 1 issues will develop a scarcity premium and will rise in price. If there is no or little grandfathering the effect will be	Noted. See resolution note 3 on grandfathering.

			exacerbated hugely as investors will anticipate that existing issues may be restructured or bought back. If issuers actually have to do this it will put a heavy burden on the industry, as both the buying back and the new issuance will be expensive and the market volumes will be enormous. Consequently, grandfathering is needed to avoid significant market cost and disruption. Such grandfathering needs to be very long (e.g. 10 years+) or until the expected call date of the instrument, thus mitigating the cost of buying back. Another consideration is the application of the grandfathering. What will be the grandfathering treatment of new issues made after the initial proposals but before the implementation of new legislation. Moreover, there is a significant risk that new issues under the new rules may not achieve tax deductibility under certain jurisdictions. For issuers in these jurisdictions there is a huge incentive to maximise tax deductible issuance under existing rules. If there is grandfathering on issues made in this transition period (which is probably for fairness and consistency unavoidable because the rules are not actually clear during this transition period) then there is the risk of heavy issuance which is itself disruptive to the market.	
62.	Lloyd's	1.6.	We note that this paper does not deal with grandfathering arrangements. It is essential that grandfathering arrangements are provided and that details of these arrangements are provided as soon as possible, given the impact on the eligibility of hybrid instruments if assessed under the proposals set out in this paper, and the potential further restrictions on the use of lower Tiers of capital.	Noted. See resolution note 3 on grandfathering.
63.	Munich RE	1.6.	There is no advice on grandfathering: Grandfathering is very important, as the majority of outstanding instruments will not fulfil the new criteria, but issuers will not be able to change the terms	Noted. See resolution note 3 on grandfathering.

			and conditions of outstanding bonds. A portion of insurance hybrid capital instruments have been issued as "Tier 1 style" instruments despite no formal concept of hybrid Tier 1 being applicable under Solvency I in most countries. These Instruments (= hybrid capital that is undated and includes optional and mandatory interest deferral [with ACSM] and a Call with step-up) should be completely regarded as Tier 1 capital at least until the first call date [=> afterwards gradual reduction of eligibility].	
64.	OAC Actuaries and Consultants	1.6.	It is unclear when transitional arrangements form Solvency I to Solvency II will be addressed.	Noted. See resolution note 3 on grandfathering.
65.	PricewaterhouseCoopers LLP	1.6.	It is unclear when transitional arrangements form Solvency I to Solvency II will be addressed. To the extent the criteria governing the eligibility of capital are more stringent under Solvency II than under Solvency I the existence of appropriate transitional measures (including the potential "grandfathering" of existing capital instruments) may be of critical importance.	Noted. See resolution note 3 on grandfathering.
66.	Solvency II Legal Group This response reflects the	1.6.	We note that transitional arrangements are not addressed in this paper. However, we expect that a significant number of insurers may be relying on capital items which would cease to be recognised under the proposed implementing measures. It therefore seems important that the need to "grandfather" or otherwise transition such items should be given early consideration so that those insurers can plan accordingly. The availability and cost of items complying with the new measures should be taken into account. We understand that CEBS is allowing grandfathering of Basel II –compliant securities under its bank capital proposals.	Noted. See resolution note 3 on grandfathering.
67.	UBS	1.6.	One should not underestimate the impact these proposed changes will have on the secondary market for hybrid Tier 1 securities.	Noted. See resolution note 3 on grandfathering.

			If the market perceives that existing Tier 1 issues are more debt like than future Tier 1 issues once the rules are in place, then existing Tier 1 issues will develop a scarcity premium and will rise in price. If there is no or little grandfathering the effect will be exacerbated hugely as investors will anticipate that existing issues may be restructured or bought back. If issuers actually have to do this it will put a heavy burden on the industry, as both the buying back and the new issuance will be expensive and the market volumes will be enormous. Consequently, grandfathering is needed to avoid significant market cost and disruption. Such grandfathering needs to be very long (spread out up to 30 years, akin to the CRD proposal for banks), thus mitigating the cost of buying back. Another consideration is the application of the grandfathering. What will be the grandfathering treatment of new issues made after the initial proposals but before the implementation of new legislation? Irrespective of the grandfathering and transition rules, there is expected to be much disruption and a heavy cost to the insurance industry and the only way to minimise this is to make the changes to Tier 1 requirements measured and proportionate relative to what has gone before.	
68.	CEA, ECO-SLV-09-441	2.1.	Replace: “this Level I text” by “directive” as in the adopted text.	Noted.
69.	German Insurance Association – Gesamtverb	2.1.	13.	Noted.

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70.	ASSOCIATION OF FRIENDLY SOCIETIES	2.2.	We believe that CEIOPS is interpreting Article 93 to mean that own funds need definition by amount on a "going concern" (or more accurately, an "open fund") basis and on a "winding up" basis. We do not agree with this. We believe Article 93 states that the type of capital should be that available on a "going concern" basis instead of looking at the less limited forms of capital that will be available on winding up. The Article or any succeeding article does not state that the amount of capital should be calculated assuming winding up.	Noted.
71.			Confidential comment deleted	
72.	Investment & Life Assurance Group (ILAG)	2.2.	We believe that CEIOPS is interpreting Article 93 to mean that own funds need definition by amount on a "going concern" (or more accurately, an "open fund") basis and on a "winding up" basis. We do not agree with this. We believe Article 93 states that the type of capital should be that available on a "going concern" basis instead of looking at the less limited forms of capital that will be available on winding up. The Article or any succeeding article does not state that the amount of capital should be calculated assuming winding up.	Noted.
73.	OAC Actuaries and Consultants	2.2.	We believe that CEIOPS is interpreting Article 93 to mean that own funds need definition by amount on a "going concern" (or more accurately, an "open fund") basis and on a "winding up" basis. We do not agree with this. We believe Article 93 states that the type of capital should be that available on a "going concern" basis instead of looking at the less limited forms of capital that will be available on winding up. The Article or any succeeding article does not state that the amount of capital should be calculated assuming winding up.	Noted.
74.			Confidential comment deleted	

75.	CEA, ECO-SLV-09-441	3.2.	As the QIS4 classification of own funds was deemed suitable and practicable by supervisors, we wonder why Ceiops proposes significant changes in this Consultation Paper compared to the QIS4 specifications.	The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased. Having regard to the comments made, CEIOPS does not consider that convincing arguments have been put forward as to why the proposed limits are inappropriate given the need for the SCR and MCR to be met with own funds of an appropriate quality and so it proposes to retain the limits set out in CP 46.
76.	German Insurance Association – Gesamtverb and der D	3.2.	As the QIS4 classification of own funds was deemed suitable and practicable by supervisors, we wonder why CEIOPS proposes significant changes in this Consultation Paper compared to the QIS4 specifications.	See response to Comment 75
77.	OAC Actuaries and Consultants	3.2.	It is unclear what gives rise to the need to raise additional capital if there are no capital breaches	See response to Comment 75

78.	CFO	3.4.	Reserves and provisions based on a book value type approach should not be considered. The assessment of assets and liabilities under Solvency II is market consistent and as a result the classification of reserves and provisions is defined under economic principles. The concept of equalisation reserves in our view relates to a book value type approach (i.e. they would not exist in a market consistent approach) and therefore should not be considered here.	Agreed
79.	CRO Forum	3.4.	In our view the assessment of assets and liabilities under Solvency II is market consistent and as a result the classification of reserves and provisions is defined. The concept of equalisation reserves in our view relates to a book-value type approach, i.e. they would not exist in a market consistent approach	Agreed
80.			Confidential comment deleted	
81.	AAS BALTA	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	Noted. Level 1 does not specify powers for Level 2 implementing measures for transitional arrangements with respect to own funds, which is why this issue was not included in the draft advice. As such CEIOPS did not consider it part of its mandate to provide advice on potential transitional measures. Further discussion is required on possible transitional provisions.
82.	AB Lietuvos draudimas	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large	Noted. See Response to Comment 81

			insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	
83.	Association of British Insurers	3.6.	We would also stress the importance of grandfathering in relation to hybrid capital instruments and subordinated liabilities.	Noted. See Response to Comment 81.
84.			Confidential comment deleted	
85.	CEA, ECO-SLV-09-441	3.6.	Grandfathering should be granted to all instruments issued under the current insurance legislation and before the date of approval of the Solvency II comes into force. Although grandfathering was expected under Level 2 and is available for capital instruments issued by the banking industry, there is no mentioning of grandfathering. Grandfathering will be crucial once the new solvency regime is in place, as this will ensure stability in the capital market. If grandfathering arrangements were not available under level 2, we would expect that some insurers, depending on the detail of the implementing measures, may need to raise new capital. This could cause turbulence in the financial markets and would increase costs of capital significantly, especially in current conditions. For these reasons, it is crucial that all instruments issued before the date when the Solvency II regime is in force, are covered by appropriate grandfathering. Grandfathering should be granted to all instruments issued under the current insurance legislation and jurisdiction and before the date Solvency II comes in force in such a way that undated instruments will be treated as Tier 1 and dated instruments will be	Noted. See Response to Comment 81.

			treated as Tier 2, either until an option to call is exercised or final maturity in the case of dated instruments with bullet maturity."	
86.	CRO Forum	3.6.	The paper identifies grandfathering as one of the key pieces of feedback from the supervisors and undertakings but no advice has been given on this vital matter that should be adequately reflected in the Implementing Measures. There is no indication as to whether currently allowable hybrid capital would be grandfathered. We believe that if eligible elements were compliant, at the date issued, with the new defined criteria in the Level2 measures, they should continue to be recognised as eligible under Solvency II. As an example, current UK Tier 1 should be grandfathered as new Level2 Tier1, only if it is compliant with the new defined criteria of eligibility.	Noted. See Response to Comment 81.
87.	DENMARK: Codan Forsikring A/S (10529638)	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	Noted. See Response to Comment 81.
88.	FFSA	3.6.	In our view, grandfathering should be granted to instruments issued before the implementation date in October 2012 of the Solvency II Directive and under the current insurance legislation. Those instruments issued prior to the implementation date of solvency II and which do not comply with the criteria for Tier 2 under the new regime but did have the features required to fall within the limit of 25% of the lower between available solvency	Noted. See Response to Comment 81.

			margin and minimum required margin shall be treated treated as Tier 2 Those instruments issued prior to the implementation date of solvency II and which do not comply with the criteria for Tier 1 under the new regime even though they ha d been structured according to the existing banking Tier 1 guidelines shall be treated as Tier 1. Those instruments shall continue to be deemed equivalent until the earlier of their redemption and 30 years after the implementation of solvency II, subject to limits: • a maximum of 20% of Tier 1 for Tier 1 instruments for the period spanning 10 years to 20 years after the implementation of solvency II and 10% of Tier 1 for the period spanning 20 years to 30 years. • a maximum of 20% of Tier 1 plus Tier 2 for Tier 2 instruments for the period spanning 10 years to 20 years after the implementation of solvency II and 10% of Tier 1 plus Tier 2 for the period spanning 20 years to 30 years.	
89.	German Insurance Association – Gesamtverb and der D	3.6.	Grandfathering should be granted to all instruments issued under the current insurance legislation and before the date of approval of the Solvency II comes into force. Although grandfathering was expected under Level 2 and is available for capital instruments issued by the banking industry, there is no mentioning of grandfathering. Grandfathering will be crucial once the new solvency regime is in place, as this will ensure stability in the capital market. If grandfathering arrangements were not available under level 2, we would expect that some insurers, depending on the detail of the implementing measures, may need to raise new capital. This could cause turbulence in the financial	Noted. See Response to Comment 81.

			markets and would increase costs of capital significantly, especially in current conditions. For these reasons, it is crucial that all instruments issued before the date when the Solvency II regime is in force, are covered by appropriate grandfathering. Grandfathering should be granted to all instruments issued under the current insurance legislation and jurisdiction and before the date Solvency II comes in force in such a way that undated instruments will be treated as Tier 1 and dated instruments will be treated as Tier 2, either until an option to call is exercised or final maturity in the case of dated instruments with bullet maturity."	
90.	GROUPAMA	3.6.	No reference is made to grandfathering. We are of the view that special attention should be paid to capital instruments issued before Solvency II comes into force. Capital instruments admitted in Tier 1 should be allowed until their maturity date or the exercise of the call.	Noted. See Response to Comment 81.
91.	Legal & General Group	3.6.	We would also stress (as per 1.6) the importance of grandfathering in relation to hybrid capital instruments and subordinated liabilities	Noted. See Response to Comment 81.
92.	Link4 Towarzystwo Ubezpieczeń SA	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	Noted. See Response to Comment 81.
93.	Lloyd's	3.6.	The fact that a number of supervisors have stressed the importance of grandfathering arrangements in respect of hybrid capital highlights the need for these to be set out as soon as possible.	Noted. See Response to Comment 81.

94.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	Noted. See Response to Comment 81.
95.	RSA Insurance Group PLC	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	Noted. See Response to Comment 81.
96.	RSA Insurance Ireland Ltd	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	Noted. See Response to Comment 81.
97.	RSA\32\45\32Sun Insurance	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt	Noted. See Response to Comment 81.

	Office Ltd.		instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	
98.			Confidential comment deleted	Noted. See Response to Comment 81.
99.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.6.	Grandfathering is essential for major insurance groups / companies in the same tier as existing sub debt instruments. For many large insurers up to 30% of capital is made up of subordinated debt instruments and CEIOPS should take this into consideration rather than looking at averages across all insurers and believing that sub debt is therefore a minor issue. Grandfathering should be until maturity for dated instruments and for an extended period beyond the call dates for perpetual instruments to allow for refinancing if market conditions will not allow issuance at the call date.	Noted. See Response to Comment 81.
100.	CEA, ECO-SLV-09-441	3.9.	Delete "no useful feedback".	Disagreed. Unclear what this comment is about.
101.	German Insurance Association – Gesamtverband der D	3.9.	delete "no useful feedback"	See response to Comment 100
102.	KPMG ELLP	3.10.	See our comments at 1.4.	Noted.
103.	CEA,	3.14.	The high amount of supplementary member calls in tier 3 was due to QIS4 specifications requiring 60 % in tier 3 (limit tier 2 to 40 %)	Noted.

	ECO-SLV-09-441		without further justification or basis in the Level I text. Add: "The high amount of supplementary member calls in tier 3 was due to QIS4 specifications requiring 60 % in tier 3 (limit tier 2 to 40 %)."	
104.	German Insurance Association – Gesamtverband der D	3.14.	The high amount of supplementary member calls in tier 3 was due to QIS4 Technical Specifications requiring 60 % in tier 3 (limit tier 2 to 40 %) without further justification or basis in the Level I text. Add: "The high amount of supplementary member calls in tier 3 was due to QIS4 specifications requiring 60 % in tier 3 (limit tier 2 to 40 %)."	Noted.
105.	BNP PARIBAS	3.15.	Grandfathering provisions for hybrid capital securities should be set out in detail. Grandfathering provisions should be sufficiently accommodative so that issuers are not facing sharp and sudden drop in solvency capital as a result of disqualification of existing instruments. This would be extremely negative for the industry as a whole. Grandfathering should allow for progressive disallowance of non-eligible instruments over long periods so the replacement can be smoothly organised and reduce competition among insurance company to access capital markets with new eligible instruments. We believe a suitable framework for grandfathering is the one that has been proposed for banks, as set out in the revised CRD which allows for a progressive phase-out of non-compliant hybrids. Under the revised CRD, non-compliant hybrids are not initially disallowed but must not exceed 20% of Tier 1 10 years after the CRD implementation, 10% in 20 years, and after 30 years cannot be included. We would suggest a similar grandfathering condition for insurance hybrid securities.	Noted. See Response to Comment 81.
106.	CFO	3.15.	Guidance on grandfathering for hybrid capital instruments is	Noted. See Response to Comment

			required. The level 2 implementing measures are silent on the treatment of grandfathering of hybrid capital instruments. Guidance covering implementation and timescales is required.	81.
107.	CEA, ECO-SLV-09-441	3.228.	**[EMPTY]**	
108.			Confidential comment deleted	Noted.
109.	CEA, ECO-SLV-09-441	3.24.	The "Way forward" in the Ceiops paper "Lessons to be learned" concluded that "Solvency II should ensure a sufficient quality of capital that guarantees its loss absorbing capacity, in particular under stressed conditions." For consistency we suggest rephrasing 3.24 for aligning it with the Ceiops paper and reflecting the inherent dynamic interpretation. Redraft: A key lesson learned from the crisis is that ~~own funds must be available in times of stress to fully absorb losses.~~ Solvency II should ensure a sufficient quality of capital that guarantees its loss absorbing capacity, in particular under stressed conditions. Those own funds must be built up when undertakings are not in stress or must be raised from investors."	Agreed
110.	German Insurance Association – Gesamtverband der D	3.24.	The "Way forward" in the CEIOPS paper "Lessons to be learned" concluded that "Solvency II should ensure a sufficient quality of capital that guarantees its loss absorbing capacity, in particular under stressed conditions." For consistency we suggest rephrasing 3.24 for aligning it with the CEIOPS paper and reflecting the inherent dynamic interpretation. Redraft: A key lesson learned from the crisis is that ~~own funds must be available in times of stress to fully absorb losses~~. Solvency II	Agreed

			should ensure a sufficient quality of capital that guarantees its loss absorbing capacity, in particular under stressed conditions. Those own funds must be built up when undertakings are not in stress or must be raised from investors."	
111.			Confidential comment deleted	Noted
112.			Confidential comment deleted	Noted
113.	CEA, ECO-SLV-09-441	3.25.	Art. 93 (1) has to be read in conjunction with Art. 94 (1): The Level I requires that tier 1 capital substantially posses the characteristic of permanent availability (as set out in Art. 93 (1) a)). For better reading we suggest to merge 3.25 and 3.26. Delete 3.25 and 3.26 and replace by: "3.25a (new) Article 94(1) requires Tier 1 own fund items to substantially possess the characteristic of permanent availability set out in point (a) of Article 93(1). Such Tier 1 own fund items are of a lower quality than own fund items that fully possess this characteristic."	Disagreed. Unsure of the relevance of this.
114.	AMICE	3.26.	CEIOPS is of the view that the term substantially in article 94(1) must be construed narrowly for the implementing measures in particular with regards to hybrid instruments which have not stopped paying coupons from the beginning of the financial crisis unlike shares. CEIOPS interpretation deviates from the Level 1 text. Substantially possess has a rather significant meaning than fully possess. See also paragraph 3.85.	Partly agreed. Paragraph 3.27 will be clarified.
115.	CEA, ECO-SLV-09-441	3.26.	See 3.25.	See Response to Comment 113
116.	ROAM –	3.26.	CEIOPS is of the view that the term substantially in article 94(1)	Partly agreed. Paragraph 3.27 will

			must be construed narrowly for the implementing measures in particular with regards to hybrid instruments which have not stopped paying coupons from the beginning of the financial crisis unlike shares. CEIOPS interpretation deviates from the Level 1 text. Substantially possess has a rather significant meaning than fully possess. See also paragraph 3.85	be clarified
117.	AAS BALTA	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
118.	AB Lietuvos draudimas	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
119.	CEA, ECO-SLV-09-441	3.27.	We disagree and urge Ceiops to stick to the Level I text as it is. Art. 94 (1) does not require that the characteristics of Art. 93 (1) a) and b) are fully possessed by tier 1 capital. The term "substantially" was politically agreed and should be the basis for Ceiops' advice.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to

				Comments on Para 3.43 and 3.44
120.	DENMARK: Codan Forsikring A/S (10529638)	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
121.	German Insurance Association – Gesamtverband der D	3.27.	We disagree and urge CEIOPS to stick to the Level I text as it is. Art. 94 (1) does not require that the characteristics of Art. 93 (1) a) and b) are fully possessed by tier 1 capital. The term "substantially" was politically agreed and should be the basis for CEIOPS' advice.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
122.	Link4 Towarzystwo Ubezpieczeń SA	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
123.	Lloyd's	3.27.	We disagree with this paragraph. The risk and capital profiles of insurers have meant that in general they have not been adversely affected by the financial crisis; it is accordingly inappropriate and potentially harmful to the global competitiveness of the industry to impose capital arrangements which are more stringent than those	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to

			envisaged in the Directive.	Comments on Para 3.43 and 3.44
124.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
125.	OAC Actuaries and Consultants	3.27.	It would be helpful if more clarity could be given to the interpretation of "construed narrowly".	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
126.	PricewaterhouseCoopers LLP	3.27.	It would be helpful if more clarity could be given to the interpretation of "construed narrowly".	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
127.	RSA Insurance Group PLC	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44

			to common equity.	
128.	RSA Insurance Ireland Ltd	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
129.	RSA\32\45\32Sun Insurance Office Ltd.	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
130.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.27.	The directive does not consider sub divisions within tiers but leaves this open for CEIOPS to discuss- which it has not been – CEIOPS have taken a very narrow definition. Within Tier 1 there is no distinction between common equity and hybrid debt and both carry the same risks which is inherently wrong – equity holders have upside potential in the share price and are paid to take more risk, bondholders receive only income and redemption proceeds, so will not wish to, or in many cases be able to, hold securities equivalent to common equity.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
131.	AAS BALTA	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing	Noted. See response to comment 81

			instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	
132.	AB Lietuvos draudimas	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
133.	CFO	3.28.	New criteria should not apply to existing hybrid capital instruments. This paragraph therefore requires updating. The new criteria should not apply to existing issues of hybrid capital instruments as these should be grandfathered (see comments in 3.15). Therefore, the words "have issued" should be removed from this paragraph.	Noted. See response to comment 81
134.	DENMARK: Codan Forsikring A/S (10529638)	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
135.	Link4 Towarzystwo Ubezpieczeń SA	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
136.	Lloyd's	3.28.	Insurers have been able to withstand the crisis better than banks, because the risk profile is different, not because banks have issued more hybrids. There is no evidence to suggest that the usage of hybrid capital by insurers represents a risk to policyholders.	Noted.
137.	Munich RE	3.28.	delete "have issued" => grandfathering is very important, new	Noted. See response to comment

			criteria must not apply to outstanding instruments.	81
138.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
139.	RSA Insurance Group PLC	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
140.	RSA Insurance Ireland Ltd	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
141.	RSA\32\45\32Sun Insurance Office Ltd.	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
142.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.28.	By referring to hybrid instruments that undertakings "have issued" CEIOPS is implying that they are considering disallowing existing instruments in the current tiers. Existing instruments must be grandfathered into current tiers i.e. innovative tier 1 should count as tier 1 going forward.	Noted. See response to comment 81
143.	AAS BALTA	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current	Noted. However, tenders and exchanges lack certainty and

			crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the "first loss" and this has happened – again demonstrates the need for sub tiers.	therefore cannot conclusively be relied upon to absorb losses. Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
144.	AB Lietuvos draudimas	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the "first loss" and this has happened – again demonstrates the need for sub tiers.	Noted. See Response to Comment 143 Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
145.	AMICE	3.29.	CEIOPS argues that no deferral of interest on hybrid capital instruments occurred during the crisis whereas at the same time dividends on ordinary shares were reduced or withheld. CEIOPS compares hybrids with shares which did not distribute dividends during the crisis. It should be noted that there is no	Noted

			contractual obligation to pay dividends, but there is a contractual obligation to pay interests on hybrids. These agreements must be respected.	
146.	Association of British Insurers	3.29.	Since many insurers have come through the crisis in a good position, they have not faced losses which would trigger the loss absorbing feature of hybrid instruments. It is therefore wrong to suggest that these instruments have failed to perform as intended. It is important not to confuse the banking and the insurance sectors. Furthermore, we believe that reducing the question of loss absorbency to interest deferral is irrelevant as the losses taken by hybrid holders in various rescues and restructurings since the beginning of the crisis by far exceed the effect of coupon deferrals.	Noted. Noted.
147.	ASSOCIATION OF FRIENDLY SOCIETIES	3.29.	We would suggest to CEIOPS that, for insurers, the recent market movements have not been as extreme as a 1:200 year event. The movement in equities has been gradual over the year and management actions have been able to be taken through the stress which has reduced the need to use particular areas of capital. It is true that hybrid capital would have been available if the situation had ever reached a crisis point. The removal of hybrid capital could be very detrimental to mutual organisations as it is the only form of capital that they could raise and still remain a mutual. The removal of hybrid capital is tantamount to asking all mutuals to demutualise.	Noted.
148.			Confidential comment deleted	
149.	CEA, ECO-SLV-09-441	3.29.	Since many insurers have come through the crisis in a good position, they have not faced losses which would trigger the loss absorbing feature of hybrid instruments. It is therefore wrong to suggest that these instruments have failed to perform as intended.	Noted.

150.	CFO	3.29.	We disagree with the assertion that hybrid capital instruments are not used for loss absorption. We believe that many hybrid capital instruments are as good as equity and should be included as part of Tier 1 capital. The last sentence includes the statement: "CEIOPS has observed virtually no deferral of interest on hybrid capital instruments." This statement is used as an observation that hybrid capital instruments are not used for loss absorption. We do not agree with this conclusion. In stressed markets, management examine the options available to maintain capital at a sufficient level and balance the interests of stakeholders. The fact that some measures are not taken initially does not mean that they will not be taken when things significantly worsen. Further, deferral is triggered on a contractual basis whereas equity dividend payments, cited in the paragraph as being loss absorbing, are not. Therefore the two are not comparable.	Noted.
151.	CRO Forum	3.29.	The last sentence includes the statement: "CEIOPS has observed virtually no deferral of interest on hybrid capital instruments." This statement is apparently used as an observation that hybrid capital instruments are not used for loss absorption. We do not agree with this conclusion. At times of stress management of an insurance company is looking at all alternatives to maintain capital at a sufficient level and aims at balancing the interests of the various stakeholders. The fact that some measures despite allowed are not taken does not mean that will not be taken when things go worse. Also, note that – unlike several banks and building societies - few European insurers have been severely distressed during the current crisis. So, it is not surprising that mechanisms intended for severe	Noted.

			distress have not been utilised.	
152.	DENMARK: Codan Forsikring A/S (10529638)	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the “first loss” and this has happened – again demonstrates the need for sub tiers.	Not agreed. These cases of deferrals and extensions were rare, and hybrid instruments do not necessarily provide low yield outflows, as we have seen through recent issuances.
153.	FRIENDS PROVIDENT	3.29.	We do not disagree with this statement, however, it only identifies differences between ordinary share capital and hybrid instruments that were foreseeable before recent events. Hybrid instruments are generally constructed so that interest payments are either a specified amount, or nil once a solvency trigger is reached. The reason that companies have not reduced interest payments on their hybrid instruments is that, even in current conditions, companies are adequately capitalised and the triggers that would cause them to defer interest payments, have not occurred. In scenarios where there is a significant risk to policyholders, hybrid instruments are almost as absorbent as ordinary share capital.	Noted.
154.	German Insurance Association – Gesamtverband der D	3.29.	Since many insurers have come through the crisis in a good position, they have not faced losses which would trigger the loss absorbing feature of hybrid instruments. It is therefore wrong to suggest that these instruments have failed to perform as intended.	Noted.
155.	Investment	3.29.	We would suggest to CEIOPS that, for insurers, the recent market	Noted.

	& Life Assurance Group (ILAG)		movements have not been as extreme as a 1:200 year event. The movement in equities has been gradual over the year and management actions have been able to be taken through the stress which has reduced the need to use particular areas of capital. It is true that hybrid capital would have been available if the situation had ever reached a crisis point.	
156.	KPMG ELLP	3.29.	This paragraph and 3.30 seem to suggest that only ordinary share capital (or equivalent) is fully loss absorbing in times of stress. However, this is rather anecdotal and it is unclear whether deferral of interest on hybrid instruments by the banks and financial institutions would have occurred absent government intervention. If such entities continue to be permitted to hold a relatively high proportion of hybrid capital, then it appears wrong for (re)insurance undertakings/groups to be penalised by imposing harder requirements on the insurance sector. In this regard, we would seek equity of treatment across the baking and insurance sectors, to reduce the risk of regulatory arbitrage.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
157.	Link4 Towarzystw o Ubezpieczeń SA	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the "first loss" and this has happened – again demonstrates the need for sub tiers.	See response to Comment 143
158.	Munich RE	3.29.	This statement is used as an observation that hybrid capital has not been used to absorb losses. We do not agree. At times of stress insurers have alternative possibilities for maintaining capital at a	Noted.

			sufficient level and aim to balance the interests of different stakeholders. The statement that some measures have not been taken does not mean that they would not have been taken if the situation had been even worse. In addition, insurers did not face the problems banks faced during the crisis.	
159.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the "first loss" and this has happened – again demonstrates the need for sub tiers.	See response to Comment 143
160.	OAC Actuaries and Consultants	3.29.	We would suggest to CEIOPS that, for insurers, the recent market movements have not been as extreme as a 1:200 year event. The movement in equities has been gradual over the year and management actions have been able to be taken through the stress which has reduced the need to use particular areas of capital. It is true that hybrid capital would have been available if the situation had ever reached a crisis point.	Noted.
161.	PricewaterhouseCoopers LLP	3.29.	The fact that loss absorption has not been observed in respect of certain types of instruments should not be taken as evidential of the fact that those instruments are not capable of absorption of losses (for example if losses have been absorbed by the reduction of dividends on ordinary shares then those same losses cannot also be absorbed by the deferral of coupons on hybrid instruments). Nor should the fact that certain instruments may, in practice,	Noted.

			absorb more earnings in times when profits are made be taken as evidential as to the extent that those instruments would absorb losses in periods when losses are incurred. Own funds in Tiers 1 and 2 are required by Article 94 to substantially possess the loss absorbency characteristics specified by Article 93. If instruments do not substantially possess those characteristics they will not qualify for inclusion within that Tier of own funds. It is therefore unclear why further restrictions would be needed to ensure the appropriate level of loss absorbency.	
162.	ROAM –	3.29.	CEIOPS argues that no deferral of interest on hybrid capital instruments occurred during the crisis whereas at the same time, CEIOPS has observed that dividends on ordinary shares have been reduced or withheld. CEIOPS compares hybrids with shares which have not provided dividends during the crisis. It should be noted that there is no contractual obligation to pay dividends, but there is a contractual obligation to pay interests on hybrids. The agreements must be respected.	Noted.
163.	RSA Insurance Group PLC	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the “first loss” and this has happened – again demonstrates the need for sub tiers.	See response to Comment 143
164.	RSA Insurance	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current	See response to Comment 143

	Ireland Ltd		crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the "first loss" and this has happened – again demonstrates the need for sub tiers.	
165.	RSA\32\45\32Sun Insurance Office Ltd.	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the "first loss" and this has happened – again demonstrates the need for sub tiers.	See response to Comment 143
166.			Confidential comment deleted	
167.	Solvency II Legal Group This response reflects the	3.29.	Also 3.30, 3.31 and 3.32. a) We are not clear how far the experience mentioned in 3.29 to 3.30 justify the conclusions in 3.31 and 3.30. For example, the fact that there may have been "virtually no deferral of interest on hybrid instruments" could in principle be explained by the fact that the issuing insurers had no need to defer and wished to avoid the risk that deferral could reflect adversely on market perceptions of their financial strength. b) More generally there is a judgment to be made as to whether a	Noted. Noted.

			permanent increase in the average quality of own funds, with its attendant costs, is justified by the recent financial crisis. This however requires an assessment of future economic developments on which we are not well qualified to opine. c) While it is perhaps not the direct concern of these Level 2 measures, we suggest that the new measures would restrain the issue by insurers of capital instruments in which other stakeholders, e.g. pension funds, might otherwise invest, and their interests should be taken into consideration.	Noted.
168.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.29.	CEIOPS is wrong to state that capital instruments have not absorbed losses. Bond prices have fallen dramatically in the current crisis and tenders and exchanges at these low levels have demonstrated real losses for investors i.e. the capital has been written down. New exchanged instruments have allowed recapitalisation. Insurers have not been under stress as much as banks and have not been forced to defer interest on bonds – equity has taken the strain and in some cases dividends have been reduced and new capital raised through bond issues. Common equity holders should take the “first loss” and this has happened – again demonstrates the need for sub tiers.	See response to Comment 143
169.	ASSOCIATIO N OF FRIENDLY SOCIETIES	3.30.	By definition, equity dividends will go up and down after any severe event. The key is knowing what management would have done faced by the 1:200 year event and how they would have reacted.	Noted
170.			Confidential comment deleted	
171.	CEA, ECO-SLV-09-441	3.30.	The crisis revealed also that markets see equity and today’s tier 1 hybrid instruments very similar: The changes of values of shares and the tier 1 hybrid instruments of insurers behaved very similar. Therefore, this shows that economically they should be put in the same bucket of capital.	Not agreed. Secondary market price is not indicative of capital quality. The market has made clear that confidence is based on a strong equity base.

172.	CFO	3.30.	We disagree with the observation that "undertakings with a strong common equity base have in general been able to withstand the crisis better". Most current accounts are on a book value basis and hence we query how this could have been observed under a market consistent approach, as is required for Solvency II. This observation does not provide an argument for requiring a higher common equity base under the market consistent Solvency II framework.	Noted. Noted. This is the case regardless of differences in national accounting or solvency regimes
173.	CRO Forum	3.30.	The observation is that "undertakings with a strong common equity base have in general been able to withstand the crisis better". We wonder how this can be observed – as most current accounts are on a book value basis and hence does not provide any argument how this would have been developed under a market consistent approach as aimed at for Solvency II. As a result in our view this observation does not provide an argument for requiring a higher common equity base under the market consistent Solvency II framework.	Noted.
174.	FRIENDS PROVIDENT	3.30.	In the UK at least, the main difference between banks and insurers that have caused insurers to ride the current crisis much better, is that insurers are not exposed to credit risk. to the same extent. It has also been due to considerable improvements in the management of risk within UK insurance companies since 2001, particularly market risk, mainly as a result of rules implemented by the FSA. It is not the result of the low amount of capital raised by hybrid instruments.	Noted.
175.	German Insurance Association	3.30.	The crisis revealed also that markets see equity and today's tier 1 hybrid instruments very similar: The changes of values of shares and the tier 1 hybrid instruments of insurers behaved very similar.	Noted. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be

	– Gesamtverb and der D		Therefore, this shows that economically they should be put in the same bucket of capital.	introduced via implementing measures. See Responses to Comments on Para 3.43 and 3.44
176.	Investment & Life Assurance Group (ILAG)	3.30.	By definition, equity dividends will go up and down after any severe event. The key is knowing what management would have done faced by the 1:200 year event and how they would have reacted.	Noted
177.	KPMG ELLP	3.30.	See 3.29.	Noted
178.	OAC Actuaries and Consultants	3.30.	By definition, equity dividends will go up and down after any severe event. The key is knowing what management would have done faced by the 1:200 year event and how they would have reacted.	Noted
179.	AMICE	3.31.	CEIOPS writes "Hence, in addition to requiring Tier 1 to be the highest quality own funds, CEIOPS is of the view that the proportion of Tier 1 items in eligible own funds must be significantly higher than one third of the total amount of eligible own funds." The Level 1 text writes "at least... higher than 1/3". AMICE members argue that CEIOPS interpretation of "significantly higher" is not in line with the Level 1 text.	Not agreed. The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased
180.			Confidential comment deleted	
181.	CEA, ECO-SLV-09-441	3.31.	See comments on 3.174.	Not agreed. The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This

				approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased. Having regard to the comments made, CEIOPS does not consider that convincing arguments have been put forward as to why the proposed limits are inappropriate given the need for the SCR and MCR to be met with own funds of an appropriate quality and so it proposes to retain the limits set out in CP 46. CEIOPS notes that an impact assessment is required, and will carry this out in due course as part of its final advice. The calculation methods for the MCR and SCR are sufficiently clear for the limits to be established.
182.	CFO	3.31.	The requirement to further increase the minimum proportion of Tier 1 will place European insurance companies at a significant cost disadvantage vis-à-vis their non-European peers as well as other financial institutions.	Noted. See Response to Comment 181
183.	CRO Forum	3.31.	See our comments on §3.168	Noted. See Response to Comment 181

184.	DIMA (Dublin International Insurance & Management	3.31.	CEIOPS' view that the proportion of Tier 1 items in eligible own funds must be significantly higher than one-third of eligible own funds does not reflect the true intention of Solvency II legislation where it has been stated that Tier 1 should be higher than one-third of the total amount of eligible own funds	Noted. See Response to Comment 179
185.	FRIENDS PROVIDENT	3.31.	As stated in response to 3.29 and 3.30, we believe that the arguments for limiting the use of lower tier capital by more than the Directive requires, are flawed. The consequence will be that premiums will become higher because companies have to raise more expensive forms of capital. If 50% of the capital used to meet the SCR has to be tier 1, the proportion in normal market conditions (when capital significantly exceeds SCR to allow a buffer for adverse conditions) needs to be much higher.	Noted. See Response to Comment 181
186.	OAC Actuaries and Consultants	3.31.	Clarification would be welcomed as what would constitute "significantly higher".	This has been clarified in para 3.44 – 3.57
187.	PricewaterhouseCoopers LLP	3.31.	Clarification would be welcomed as what would constitute "significantly higher" together with the rationale for CEIOPS arriving at that quantification.	This has been clarified in para 3.44 – 3.57. Also, see response to comment 181
188.	ROAM –	3.31.	CEIOPS writes "Hence, in addition to requiring Tier 1 to be the highest quality own funds, CEIOPS is of the view that the proportion of Tier 1 items in eligible own funds must be significantly higher than one third of the total amount of eligible own funds. The level 1 text writes 'at least... higher than 1/3'. ROAM member argue that such interpretation of 'significantly higher' is not in line with the Level 1 text.	Noted. See response to Comment 179
189.	AAS BALTA	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since	Not agreed. See response to Comment 181

			QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	
190.	AB Lietuvos draudimas	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	Not agreed. See response to Comment 181
191.			Confidential comment deleted	
192.	CEA, ECO-SLV-09-441	3.32.	See comments on 3.174.	Noted. See response to Comment 181
193.	CRO Forum	3.32.	See our comments on §3.169	Not agreed. See response to Comment 181
194.	DENMARK: Codan Forsikring A/S (10529638)	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	Not agreed. See response to Comment 181
195.	Link4 Towarzystwo Ubezpieczeń SA	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	Not agreed. See response to Comment 181
196.	NORWAY: Codan Forsikring (Branch	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should	Not agreed. See response to Comment 181

	Norway) (991 502		refrain from this and revert largely to QIS4.	
197.	RSA Insurance Group PLC	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	Not agreed. See response to Comment 181
198.	RSA Insurance Ireland Ltd	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	Not agreed. See response to Comment 181
199.	RSA\32\45\32Sun Insurance Office Ltd.	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	Not agreed. See response to Comment 181
200.			Confidential comment deleted	
201.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.32.	Increasing the amount and quality of Tier 1, increasing the quality of Tier 2 and decreasing amount / increasing quality of Tier 3 since QIS4 is an over-reaction to the market conditions particularly since insurers have been able to withstand the crisis. CEIOPS should refrain from this and revert largely to QIS4.	Not agreed. See response to Comment 181
202.	AAS BALTA	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow	Agreed that Tier 1 may include hybrids. However, it is clear that all tier 1 instruments must absorb losses at a sufficiently early stage to support the undertaking as a going concern. Any other

			sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	approach would not be consistent with the L1 text.
203.	AB Lietuvos draudimas	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	Not agreed. See response to Comment 202
204.	CFO	3.33.	Tier 1 definition should allow for the inclusion of hybrid capital instruments. Excluding hybrid capital instruments from Tier 1 would put insurance companies at a disadvantage compared to other financial institutions, for example banks. Capital costs would increase and these would ultimately be born by policyholders. Trigger points should be set at a level lower than the SCR. A trigger point set at the SCR level would, in order for the hybrid capital instrument to be marketable to investors, require insurance companies to hold significant buffers above the SCR thus in effect introducing a third capital requirement. Therefore, a lower trigger point would be more appropriate.	Noted. CEIOPS recognises that there may be a role for high quality hybrids in Tier 1, provided that in stressed situations, they convert or write down to provide higher quality capital in the form of equity. Not agreed. The breach of the SCR limits triggers a ladder of supervisory intervention that would not be made possible is the limit was lower. It would also be inconsistent with the L1 text.
205.	DENMARK: Codan Forsikring A/S (10529638)	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow	Not agreed. See Response to Comment 202

			sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	
206.	KPMG ELLP	3.33.	(a) We believe that it should be possible for some capital instruments other than ordinary share capital (or equivalent) to be considered for Tier 1 classification, subject to fulfilling the requirements for determination of Tier 1 (i.e. ensuring full loss absorbency). We therefore support option b) in this paragraph. (b) The examples given in sub-paragraph b) appear to be types of instrument that should be able to be structured to meet the tier 1 classification requirements. However, we feel that further guidance would be helpful regarding the "automatically convertible instruments" – for example, greater clarity on the triggers for conversion and what under what circumstances (if any) they could revert to their former status. In considering such terms, we believe it is important that a common approach is adopted across supervisory authorities and (re)insurance undertakings/groups, so there is a level playing field regarding capital instruments.	Agreed. Noted.
207.	Link4 Towarzystwo Ubezpieczeń SA	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	Not agreed. See Response to Comment 202
208.	Lloyd's	3.33.	Sub-paragraph a: The idea of restricting Tier 1 to share capital and its equivalent would eliminate an important source of Tier 1 capital for insurers ie hybrid capital. No justification is provided for this proposal. Sub-paragraph b: we suggest that any automatic write-	Agreed that hybrid capital may be included in Tier 1, subject to restrictions and not weakening their characteristics Not agreed. CEIOPS maintains its

			down/conversion arrangements for subordinated debt should be triggered by a breach of MCR not SCR as the minimum solvency level. The requirement for the SCR to act as the trigger point would make the issue of such debt very unattractive to potential investors and thus very expensive for issuers.	view that an MCR based trigger would be ineffective given that an MCR breach results in ultimate supervisory action. Any trigger between the MCR and the SCR would create an additional level for the undertaking to monitor and would not be consistent with the L1 text.
209.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	Not agreed. See Response to Comment 202
210.	OAC Actuaries and Consultants	3.33.	Option b) would be preferable as it acknowledges the possibility that a hybrid capital instrument / subordinated liability is capable of meeting the tier 1 characteristics and should therefore be permitted to be included in tier 1 if it does so. Option a) seems unduly restrictive.	Noted. CEIOPS recognises that there may be a role for high quality hybrids in Tier 1, provided that in stressed situations, they convert or write down to provide higher quality capital in the form of equity. However, CEIOPS cannot support any regime in which hybrid instruments could represent all or the most significant part of Tier 1. Any inclusion of high quality hybrids in Tier 1 should therefore be restricted i.e. they should account for no more than [20/30%] of

				Tier 1. As stated in CP46 CEIOPS continues to see an inherent trade-off between the requirements for the quality of own funds eligible to cover capital requirements and the limit structure applicable to the tiers to which those own funds are allocated. Therefore, it is not proposed that the limit for Tier 1 be lowered below 50% or the characteristics for hybrids be weakened i.e. they should continue to be required to absorb losses first or rank *pari passu*, in going concern, with capital instruments that absorb losses first.
211.	PricewaterhouseCoopers LLP	3.33.	Option b) would be preferable to option a) as it acknowledges the possibility that a hybrid capital instrument / subordinated liability is capable of meeting the Tier 1 characteristics and should therefore be permitted to be included in Tier 1 if it does so. Option a) seems unduly restrictive and potentially contrary to Article 94(1) which mandates that own fund items shall be included in Tier 1 if they possess the necessary characteristics. As set out in paragraph 3.35 there may be circumstances where other instruments are considered to have the characteristics of Tier 1.	Noted. See response to Comment 210
212.	RSA Insurance Group PLC	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb	Not agreed. See Response to Comment 202

			losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	
213.	RSA Insurance Ireland Ltd	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	Not agreed. See Response to Comment 202
214.	RSA\32\45\32Sun Insurance Office Ltd.	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	Not agreed. See Response to Comment 202
215.			Confidential comment deleted	
216.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.33.	b) Tier 1 should include hybrid capital instruments. If an insurance company issues a subordinated bond, the bondholder knows that once the insurer's equity is eroded, it will be next in line to absorb losses. It is a ridiculous statement to expect subordinated hybrid instruments to absorb losses first i.e. before shareholders equity has been eroded. CEIOPS should reconsider this point and allow sub tiers so that bondholders who do not receive potential equity returns do not have to bear equity risks.	Not agreed. See Response to Comment 202

217.	UNESPA (Association of Spanish Insurers)	3.33.	See 3.170	Noted. See Response to Comment 210
218.	CEA, ECO-SLV-09-441	3.34.	We are highly concerned that a number of Ceiops members are obviously in favour of option a) (3.33). Today the importance of hybrid capital is very different in different markets (as shown by QIS4: 85 % concentrated in DE, F, IT, UK – see 3.15). The importance in other markets should be not neglected, even if hybrid instruments do not play a major role in the domestic market of the supervisor. The view of these Ceiops members is not in line with the Level I text. Reference to “ordinary share capital” is an accounting based approach which would circumvent the economic balance sheet approach of Solvency II.	Noted. See Response to Comment 210
219.	German Insurance Association – Gesamtverb and der D	3.34.	We are highly concerned that a number of CEIOPS members are obviously in favour of option a) (3.33). Today the importance of hybrid capital is very different in different markets (as shown by QIS4: 85 % concentrated in DE, F, IT, UK – see 3.15). The importance in other markets should be not neglected, even if hybrid instruments do not play a major role in the domestic market of the supervisor. The view of these CEIOPS members is not in line with the Level I text. Reference to “ordinary share capital” is an accounting based approach which would circumvent the economic balance sheet approach of Solvency II.	Noted. See Response to Comment 210
220.	Lloyd’s	3.34.	See comment to 3.33. We do not agree that Tier 1 should be restricted to ordinary share capital or its equivalent.	Noted. See Response to Comment 210
221.	AAS BALTA	3.35.	We do not agree with an approach where capital instruments are	Noted. See Response to Comment

			recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	210
222.	AB Lietuvos draudimas	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	Noted. See Response to Comment 210
223.			Confidential comment deleted	
224.	CEA, ECO-SLV-09-441	3.35.	We do not believe that hybrid capital should only qualify for tier 1 in exceptional circumstances. The market for long-term investors is driven by trust and reputation of issuers. Both cannot be taken as granted in stressed situations. The objective to aid a recapitalization is then not achievable. Theoretically, the fulfilment of the criteria for classification would not differ in time. We agree that allowing for inclusion of more instruments in tier 1 in stressed situations is an anti-cyclic measure. However, we would be reluctant to allow for supervisory discretion in such an irregular possibility. If only new issued capital instruments are covered, the effect would be very limited compared to the application to all instruments. We are not convinced that "criteria for inclusion in tier 1 in exceptional circumstances" could be developed without raising conflicts to criteria in the Level I text and its "normal" interpretation at Level II. The Level I text does not allow for interpreting the criteria different in normal and stressed situations.	Noted. See Response to Comment 210

			Such exceptional allowance for inclusion in tier 1 cannot be done via the approval process for items not covered by the list of own funds in accordance with Article 97 (1) b). Because this process is limited to capital instruments not covered by that list. We reject the notion that tier 1 capital of a lower quality is solely used to grow companies business. We have no evidence that financing M & A activities is necessarily accompanied by a lower overall quality of capital. We note that the view of some Ceiops' members to make a distinction between economic circumstances for the classification of own funds items is not supported by the European Commission. We would think that the disadvantages of such an approach would overweight the potential benefits. E. g. even without more details, we think that the approach could be arbitrary because objective criteria for determining exceptional circumstances are easily specified whether at company or market level. A lack of legal certainty for undertakings and investors would be the consequence. In banking nothing similar exists. We are not aware that rating agencies think of such a distinction.	
225.	DENMARK: Codan Forsikring A/S (10529638)	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	Noted. See Response to Comment 210
226.	German Insurance Association – Gesamtverb	3.35.	Hybrid capital instruments should qualify for tier 1 in normal situations We do not believe that hybrid capital should only qualify for tier 1 in exceptional circumstances. The market for long-term investors is	Noted. See Response to Comment 210

	and der D		driven by trust and reputation of issuers. Both cannot be taken as granted in stressed situations. The objective to aid a recapitalization is then not achievable. Theoretically, the fulfilment of the criteria for classification would not differ in time. We agree that allowing for inclusion of more instruments in tier 1 in stressed situations is an anti-cyclic measure. However, we would be reluctant to allow for supervisory discretion in such an irregular possibility. If only new issued capital instruments are covered, the effect would be very limited compared to the application to all instruments. We are not convinced that "criteria for inclusion in tier 1 in exceptional circumstances" could be developed without raising conflicts to criteria in the Level I text and its "normal" interpretation at Level II. The Level I text does not allow for interpreting the criteria different in normal and stressed situations. Such exceptional allowance for inclusion in tier 1 cannot be done via the approval process for items not covered by the list of own funds in accordance with Article 97 (1) b). Because this process is limited to capital instruments not covered by that list. We reject the notion that tier 1 capital of a lower quality is solely used to grow companies business. We have no evidence that financing M & A activities is necessarily accompanied by a lower overall quality of capital. We note that the view of some CEIOPS's members to make a distinction between economic circumstances for the classification of own funds items is not supported by the European Commission. We would think that the disadvantages of such an approach would overweight the potential benefits. E. g. even without more details, we think that the approach could be arbitrary because objective criteria for determining exceptional circumstances are easily	

			specified whether at company or market level. A lack of legal certainty for undertakings and investors would be the consequence. Markets would not accept the changes in the recognition and hence, undertakings would not benefit from the reclassification, especially if publicly disclosed. The approach discussed by CEIOPS would be singular: In banking nothing similar exists and would work differently because of differences in the structure of the duration of liabilities. We are also not aware that rating agencies think of such a distinction.	
227.	KPMG ELLP	3.35.	We agree with the European Commission's view that economic circumstances should not affect the classification of own fund items. In reality it could prove difficult to determine when a capital instrument that has been permitted to cover a particular stress would cease to be eligible for Own Funds treatment, as care would be needed to ensure that a sudden reduction in Own Funds did not have a detrimental effect on either SCR coverage or public perception.	Noted. See Response to Comment 210
228.	Link4 Towarzystwo Ubezpieczeń SA	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	Noted. See Response to Comment 210
229.	Moody's Investors Service	3.35.	In its classification of hybrid securities, Moody's would not alter such classification depending on the underlying economic circumstances. Firstly, the loss absorption characteristics of hybrids are independent of economic circumstances as the terms and conditions would not change. The fact that the economic situation makes it perhaps more likely that the hybrid will absorb losses does not change the terms of how and when it absorbs losses. Secondly,	Noted.

			the determination of what economic circumstances would be required to trigger a change in the classification of newly issued hybrids is subjective. In addition, for example, this could result in a hybrid structure receiving Tier 1 credit if it is issued by an insurer based in one country while only Tier 2 credit if issued by an insurer based in another country, if the economic circumstances in these countries differ. The problem is compounded by issuers who function across borders.	
230.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	Noted. See Response to Comment 210
231.	OAC Actuaries and Consultants	3.35.	Whilst a flexible approach in stressed circumstances would be welcomed, it is envisaged that setting out criteria for inclusion would be challenging and there is a concern that there may be inconsistent application throughout the Member States.	Noted.
232.	PricewaterhouseCoopers LLP	3.35.	Whilst a flexible approach in stressed circumstances would be welcomed, it is envisaged that setting out criteria for inclusion would be challenging and there is a concern that there may be inconsistent application throughout the Member States. We therefore concur that the criteria for inclusion in these circumstances would need to be developed to ensure a consistency of approach.	Noted.
233.	RSA Insurance Group PLC	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison	Noted. See Response to Comment 210

			between firms / sectors.	
234.	RSA Insurance Ireland Ltd	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	Noted. See Response to Comment 210
235.	RSA\32\45\32Sun Insurance Office Ltd.	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	Noted. See Response to Comment 210
236.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.35.	We do not agree with an approach where capital instruments are recognised as higher quality capital during an economic downturn or times of stress. Capital should always be considered as to its ability to absorb losses which will always be in a time of stress. This treatment would make it very difficult to make a comparison between firms / sectors.	Noted. See Response to Comment 210
237.	AAS BALTA	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would ensure capital is ongoing in times of stress.	Noted. See Response to Comment 210
238.	AB Lietuvos draudimas	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would	Noted. See Response to Comment 210

			ensure capital is ongoing in times of stress.	
239.	CFO	3.36.	The "lock-in clause" in the text needs to be clearly defined to be transparent for the benefit of investors. The "lock-in clause" in the text needs to be clearly defined by specific conditions. These conditions should define when hybrid capital instruments/subordinated liabilities get locked-in in Tier 1 and when redemption takes place. Only such a clear definition will make this mechanism transparent for investors. This is particular important because investors are generally not familiar with the described new clauses. In case these clauses prevent a functioning capital market for lower Tier instruments it is likely that the capital costs will increase and pure equity is the remaining funding source. This might be likely if the conditions for prohibiting redemption are not transparent. Importantly, we believe this is a controversial topic as far as the regulators are concerned, since there will always be much debate over whether the prohibition was justifiable. In general, we do not think that the intervention rights for the insurance regulators should exceed the ones for banking regulators, because this would bring disadvantages in terms of higher capital costs for insurance / reinsurance companies, preventing a levelled playing field. The text "a breach could occur within the next twelve months" should be changed to "three months" in line with the level 1 text.	Agreed. Amend text to include these comments. Noted. Disagreed. This may not provide scope for timely intervention.
240.	CRO Forum	3.36.	We appreciate the thoughts as expressed here regarding the criteria/ ways of recognition of Tier1, but we note this would require regular calculations and assessment. Note that Tier 1 own funds as defined in this paper may be very volatile (as it is the difference between assets and liabilities on a market consistent balance sheet) and hence will have a significant impact on the outcomes.	Not agreed.

			Lock-in clauses, while generally acceptable, would need to be clearly defined and transparent in order for investors to become comfortable with them.	Agreed. See response to comment 239
241.	DENMARK: Codan Forsikring A/S (10529638)	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would ensure capital is ongoing in times of stress.	Noted. See Response to Comment 210
242.	KPMG ELLP	3.36.	As noted above in 3.33, we support the view that hybrid capital instruments should be in theory be eligible for Tier 1 categorisation. Requiring some form of lock-in arrangements appears sensible, but we have reservations that this could require more regular SCR calculations than the Level 1 text requires. In light of the comments made in paragraph 3.29 of the CP, this would also require demonstrable willingness to defer interest payments in times of stress.	Noted. See Response to Comment 210
243.	Link4 Towarzystwo Ubezpieczeń SA	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would ensure capital is ongoing in times of stress.	Noted. See Response to Comment 210
244.	Lloyd's	3.36.	As per 3.33 above – we propose that the lock-in clause should be triggered by a breach of the MCR not SCR.	Disagreed. Inconsistent with L1 text, and a breach of the MCR would trigger ultimate supervisory action, rather than the ladder of intervention, as with the SCR.

245.	Munich RE	3.36.	Hybrid Capital should be allowed in Tier 1. Setting the trigger point at the SCR is too early and would endanger marketability, as the risk for investors increases. A compromise could be to set optional triggers at the SCR (e.g. optional interest deferral) and mandatory triggers at the MCR (e.g. mandatory interest deferral).	Disagreed. See response to comment 244
246.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would ensure capital is ongoing in times of stress.	Noted. See Response to Comment 210
247.	OAC Actuaries and Consultants	3.36.	An approach to allow provision subject to the addition of certain safeguards would be supported.	Noted. See Response to Comment 210
248.	PricewaterhouseCoopers LLP	3.36.	An approach to allow inclusion of such instruments within Tier 1 subject to the addition of certain safeguards would appear proportionate.	Noted. See Response to Comment 210
249.	RSA Insurance Group PLC	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would ensure capital is ongoing in times of stress.	Noted. See Response to Comment 210
250.	RSA Insurance Ireland Ltd	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would	Noted. See Response to Comment 210

			ensure capital is ongoing in times of stress.	
251.	RSA\32\45\32Sun Insurance Office Ltd.	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would ensure capital is ongoing in times of stress.	Noted. See Response to Comment 210
252.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.36.	And 3.37. Agreed that hybrid capital instruments should be included as Tier 1 – it is already a feature of many instruments that redemption is subject to supervisory approval and issuers have to demonstrate that there is sufficient capital after redemption. This could be enshrined within all subordinated debt issues and would ensure capital is ongoing in times of stress.	Noted. See Response to Comment 210
253.	UNESPA (Association of Spanish Insurers)	3.36.	See 3.170	Noted. See Response to Comment 210
254.			Confidential comment deleted	
255.	AMICE	3.38.	The limits proposed by CEIOPS (50% for Tier 1, 15% for Tier 3) are not consistent with the principles of the Level 1 text. Additionally, CEIOPS is not providing satisfactory reasoning for a more restrictive tiering.	The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased. Having regard to the comments made, CEIOPS does not consider that convincing arguments have

				been put forward as to why the proposed limits are inappropriate given the need for the SCR and MCR to be met with own funds of an appropriate quality and so it proposes to retain the limits set out in CP 46. CEIOPS notes that an impact assessment is required, and will carry this out in due course as part of its final advice. The calculation methods for the MCR and SCR are sufficiently clear for the limits to be established.
256.	Association of British Insurers	3.38.	See comments under 3.171	Noted.
257.	DIMA (Dublin International Insurance & Management	3.38.	The requirement that to be classified as Tier 1 the instruments should be fully paid will devoid most of the undertakings from credit taken in Solvency I for taking up 50% of share capital as an admitted asset if 25% or more of the authorised share capital is paid up. According to the proportionality principle, this concession should be allowed for captive undertakings.	Noted.
258.	KPMG ELLP	3.38.	We agree that any Tier 1 instrument must be fully paid up, as we believe that there should be no possibility of a solvency benefit being able to be created by issuing unpaid share capital.	Agreed.

			We can see arguments both ways for extending this concept to all basic Own Fund instruments, leaving just ancillary Own Funds (AOF) to be unpaid and would like to see CEIOPS consider this issue.	Noted.
259.	OAC Actuaries and Consultants	3.38.	Agreed that tier 1 items should be fully paid up	Agreed
260.	PricewaterhouseCoopers LLP	3.38.	We concur that Tier 1 items should be fully paid up.	Agreed
261.	ROAM –	3.38.	The limits proposed by CEIOPS (50% for Tier 1, 15% for Tier 3) are not consistent with the spirit of the Level 1 text. Additionally, CEIOPS is not providing satisfactory reasoning for a more restrictive tiering.	See Response to Comment 255
262.			Confidential comment deleted	
263.	AMICE	3.39.	CEIOPS writes that own funds that have been called up but not paid in will also be subject to a capital charge for counterparty risk, as in the case for other receivables which have not been paid in. The purpose of this requirement is to address the potential default risk and is still considered necessary even if the called-up capital is included in Tier 2. This is because counterparty default would also prevent capital absorbing losses in a winding-up. AMICE understands that the capital charge for counterparty default risk in case of supplementary calls should also take into account the contractual nature of the member/mutual relation.	Noted.
264.	KPMG ELLP	3.39.	We agree that where any Own Funds element is not fully paid in, there should be a counterparty risk charge applied to the amount	Agreed.

			outstanding.	
265.	ROAM –	3.39.	CEIOPS writes that own funds that have been called up but not paid in will also be subject to a capital charge for counterparty risk, as in the case for other receivables which have not been paid in. The purpose of this requirement is to address the potential default risk and is still considered necessary even if the called-up capital is included in Tier 2. This is because counterparty default would also prevent capital absorbing losses in a winding-up. ROAM understands that such capital charge for counterparty default risk in case of supplementary calls should also take into account the contractual nature of the member/mutual relation.	Noted.
266.	CEA, ECO-SLV-09-441	3.40.	See comment to 3.176.	Noted. CEIOPS welcomes these comments and will reinforce in the final advice the need for these characteristics for all tiers of own funds to ensure that subordination is effective.
267.	CFO	3.40.	Further clarification is required as to why the minimum maturity for Tier 3 capital instruments should be more than 1 year. We agree with the principle of supervisory approval for redemption as set out in this paragraph. However, the rationale for having a minimum maturity of more than one year is not clear. Further clarification of this point is requested.	Noted. See response to comment 266
268.	DIMA (Dublin International Insurance & Management	3.40.	The CEIOPS recommendation of Tier 3 funds redemption subject to supervisory approval will be a cumbersome task for small undertakings especially captive insurance and reinsurance undertakings. It should be left with the individual undertakings to redeem Tier 3 items according to their requirements. Also, the	Noted. See response to comment 266

			Solvency II text does not have this condition for Tier 3 items.	
269.	KPMG ELLP	3.40.	We agree with CEIOPS that there should be some minimum qualitative requirements for Tier 3 capital, notwithstanding that this goes beyond the Level 1 text. The requirement for supervisory approval of redemption appears sensible in this regard.	Noted. See response to comment 266
270.	Munich RE	3.40.	Commission's view is supported, i.e. Level 1 text does not require Tier 3 own funds to display any features beyond legal subordination.	Noted. See response to comment 266
271.	OAC Actuaries and Consultants	3.40.	Agreed that tier 1 items should be fully paid up.	Agreed.
272.			Confidential comment deleted	
273.	CEA, ECO-SLV-09-441	3.41.	See comment to 3.174.	Noted.
274.	AAS BALTA	3.42.	Although CEIOPS should be cognisant to where banking initiatives are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	Noted.
275.	AB Lietuvos draudimas	3.42.	Although CEIOPS should be cognisant to where banking initiatives are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future	Noted.

			proposed alignment between the banking and insurance frameworks proposed in 3.226.	
276.			Confidential comment deleted	
277.	Association of British Insurers	3.42.	Requirements between the banking and the insurance sectors should be aligned where possible and appropriate. However, At the very least insurers should get equal treatment to that of banks in the recognition of capital instruments - given the lack of an equivalent liquidity risk, and the longer term nature of insurance there is, in fact a good case for allowing debt capital instruments to a far greater extent.	Noted.
278.			Confidential comment deleted	
279.	CEA, ECO-SLV-09-441	3.42.	A level playing field between banks and insurers needs to be ensured. See comment to 3.226.	Noted.
280.	CFO	3.42.	The CFO Forum disagrees with the statement made in this paragraph. For example, the recently implemented CRD allows for Tier 1 with incentives to redeem. Also, the initially planned CRD foresaw many of the features that CP 46 foresees now, which have been dropped in the final text following extensive market feedback.	Noted.
281.	DENMARK: Codan Forsikring A/S (10529638)	3.42.	Although CEIOPS should be cognisant to where banking initiatives are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	Noted.
282.	Link4	3.42.	Although CEIOPS should be cognisant to where banking initiatives	Noted.

	Towarzystw o Ubezpieczeń SA		are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	
283.	Munich RE	3.42.	Current CEBS consultation paper is less restrictive and would privilege the banking industry. Therefore we do not agree with the CEIOPS view.	Noted.
284.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.42.	Although CEIOPS should be cognisant to where banking initiatives are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	Noted.
285.	Pearl Group Limited	3.42.	Requirements between the banking and the insurance sectors should be aligned as much as possible. In any event, the requirements for insurers should not be more onerous than for banks and should avoid creating an unlevel playing field between the two sectors. As they currently, the proposals set out in CP 46 would put insurers at disadvantage compared to banks.	Noted.
286.	RSA Insurance Group PLC	3.42.	Although CEIOPS should be cognisant to where banking initiatives are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	Noted.
287.	RSA	3.42.	Although CEIOPS should be cognisant to where banking initiatives	Noted.

	Insurance Ireland Ltd		are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	
288.	RSA\32\45\32Sun Insurance Office Ltd.	3.42.	Although CEIOPS should be cognisant to where banking initiatives are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	Noted.
289.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.42.	Although CEIOPS should be cognisant to where banking initiatives are moving, the proposals go much further than QIS4 and take Level 1 text to the widest extreme possible. To ensure that the capital regime for Insurers does not become super-equivalent to banking we consider that this issue can be addressed by the future proposed alignment between the banking and insurance frameworks proposed in 3.226.	Noted.
290.	AAS BALTA	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	CEIOPS recognises there may be a role for high quality hybrids, provided that in stressed situations, they convert or write down to provide higher quality capital in the form of equity. However, CEIOPS cannot support any regime in which hybrid instruments could represent all or the most significant part of Tier 1. Any inclusion of high quality

				hybrids in Tier 1 should therefore be restricted i.e. they should account for no more than [20/30%] of Tier 1. CEIOPS will seek clarification as to whether sub tiers for Tier 1 could be introduced via implementing measures.
291.	AB Lietuvos draudimas	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.
292.			Confidential comment deleted	
293.	CEA, ECO-SLV-09-441	3.43.	Definition and principles on tier 1 hybrid capital may be aligned even if the tier limits and of course the capital requirements are not aligned. Replace "the definition of Tier 1 own funds" by "tiering of own funds".	Noted Agreed and amendment accepted
294.	CRO Forum	3.43.	Level 1 does not mention sub-tiers. But, anyway, sub-tiering is a distinct question than quality of capital. As already stated in our response, the current proposal appears to ignore the developments of hybrid securities structures since limited differentiation across marketable hybrid securities would be made under the proposed regime and most hybrids would fall in the Tier 2 bucket. Allowing the theoretical possibility of T1 instruments other than ordinary shares is not helpful. The requirements proposed by CP46 would make such instruments profoundly unattractive. No one will	Noted. See response to comment 290.

			invest in an instrument which carries an investment risk equivalent to that of ordinary shares, but without the upside an equity investor expects from the potential price increase of shares and without any shareholder voting rights. In order to induce anyone to invest in such an instrument, its coupon would have to be at least the expected total return on an investment in ordinary shares, probably even higher to compensate for lack of voting rights – a prohibitive cost.	
295.	DENMARK: Codan Forsikring A/S (10529638)	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.
296.	Link4 Towarzystw o Ubezpieczeń SA	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.
297.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.
298.	RSA Insurance Group PLC	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.
299.	RSA Insurance Ireland Ltd	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.

300.	RSA\32\45\32Sun Insurance Office Ltd.	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.
301.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.43.	Level 1 text does not rule out sub-tiers, so left to CEIOPS to consider. Sub-tiers should not be dismissed in order to allow some subordinated debt to count as Tier 1	Noted. See response to comment 290.
302.	Lloyd's	3.44.	The proposed (arbitrary) limits appear inconsistent with the Framework Directive and significantly more onerous. Overall, the requirements regarding Tier 1 capital, both in terms of limits (Tier 1 and Tier 2) and criteria for eligibility, are more restrictive than specified in the Directive/Level 1 text. We agree with the approach taken in the Framework Directive (which was finalised after considerable thought and discussion within Europe). We agree also that there is a need to provide more details regarding implementation; however implementing measures should not go beyond what is agreed in the Directive.	The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased. Having regard to the comments made, CEIOPS does not consider that convincing arguments have been put forward as to why the proposed limits are inappropriate given the need for the SCR and MCR to be met with own funds of an appropriate quality and so it proposes to retain the limits set out in CP 46. CEIOPS notes that an impact assessment is required, and will

				carry this out in due course as part of its final advice. The calculation methods for the MCR and SCR are sufficiently clear for the limits to be established.
303.	Pricewaterho useCoopers LLP	3.44.	Article 94(3) states (emphasis added) "Any basic and ancillary own fund items which do not fall [to be classified as Tier 1 or Tier 2] shall be classified in Tier 3." Given the requirements of this Article it is unclear what basis exists within the Level 1 text for excluding any items that meet the definition of either basic or ancillary own funds from Tier 3.	Noted. See response to comment 266
304.	CEA, ECO-SLV-09-441	3.45.	See comment to 3.46.	Noted. Impact assessment will be prepared.
305.	CEA, ECO-SLV-09-441	3.46.	Ceiops proposals are initial and should be reviewed in the light of an appropriate impact assessment as part of the 3rd wave of CPs. We fully recognize the fact that Ceiops proposal as regards quantitative limits are initial. We would expect a deep impact assessment including a cost-benefit analysis before Ceiops gives it final advice.	Noted. Impact assessment will be prepared.
306.	German Insurance Association – Gesamtverb and der D	3.46.	CEIOPS proposals are initial and should be reviewed in the light of a appropriate impact assessment as part of the 3rd wave of CPs We fully recognize the fact that CEIOPS proposal as regards quantitative limits are initial. We would expect a deep impact assessment including a cost-benefit analysis before CEIOPS gives it	Noted. Impact assessment will be prepared.

			final advice.	
307.	PricewaterhouseCoopers LLP	3.46.	Given the importance of these proposals, the understanding of their impact should be key in assessing their suitability. CEIOPS should not therefore finalise its views on the limit structure proposed in this CP until it has considered stakeholders' comments on the impact assessment to be published in the third set of consultations.	Noted. Impact assessment will be prepared.
308.	UNESPA (Association of Spanish Insurers)	3.46.	See 3.174	Noted. Impact assessment will be prepared.
309.	ASSOCIATION OF FRIENDLY SOCIETIES	3.47.	We are concerned that any firm that only has Tier 1 and Tier 3 capital will not be able to show their Tier 3 capital by this paragraph. Please clarify that tier 3 capital will be allowed if only tier 1 and tier 3 exist.	Noted. This paragraph describes the development of the relative proportions and was not intended to suggest that Tier 3 could not be counted without the existence of eligible Tier 2. Paragraph 3.47 will be clarified to remove the misunderstanding over the eligibility of Tier 3.
310.	Groupe Consultatif	3.47.	3.47 / 3.48 (Proposed limit structure): Agree with the application of different limits for the MCR and SCR coverage (aligned with what was required by the European Insurance Associations), although the proposed limits are more strict than what it is required in level 1. From a GC perspective is not a major issue but from an insurance industry perspective it would be convenient to allow more flexibility.	 Noted.
311.	KPMG ELLP	3.47.	The recommendation that the proportion of tier 1 capital should be greater than the proportion of tier 2 capital, which should in turn be	Agreed. This paragraph describes the development of the relative

			greater than the proportion of tier 3 capital does not exist in the Level 1 text. We do not agree with the proposal that tier 2 capital should exceed tier 3 capital. The reason for this is the minimum duration periods (set out later in the CP). Tier 3 is the shortest minimum duration, and we believe firms should be able to raise short term capital to address specific short-term capital needs without the need to raise longer duration capital as well. If a firm had no existing tier 2 capital, under this proposal it would not be able to raise such short term financing without also raising longer duration capital at the same time. The issue of two capital instruments rather than one has clear cost implications.	proportions and was not intended to suggest that Tier 3 could not be counted without the existence of eligible Tier 2. Paragraph 3.47 will be clarified to remove the misunderstanding over the eligibility of Tier 3.
312.	Lloyd's	3.47.	We consider that the structure of Tier 1 > Tier 2 > Tier 3 is artificial and of no apparent merit.	See comment to 311.
313.	OAC Actuaries and Consultants	3.47.	The coverage of the SCR requirement would seem to go further than that set out in article 98.1 where although T1 must be greater than a third of own funds and tier 3 less than one third, the relative mix between tier 2 and 3 is not limited i.e. tier 2 could form up to 2/3 of own funds with tier 1 the other third. The revised proposal would prevent the use of tier 3 own funds in the absence of any tier 2 own funds. This might impact the current own funds situation of some companies. The requirement for MCR coverage is sensible.	See comments to 311 and 316.
314.	PricewaterhouseCoopers LLP	3.47.	The coverage of the SCR requirement would seem to go further than that set out in article 98.1 where although Tier 1 must be greater than a third of own funds and Tier 3 less than one third, the relative mix between Tier 2 and 3 is not limited i.e. Tier 2 could form up to 2/3 of own funds with Tier 1 the other third. The revised proposal would prevent the use of Tier 3 own funds in the absence of any Tier 2 own funds. This might impact the current own funds	See comments to 311 and 316.

			situation of some companies. See further comments on paragraph 3.50 to illustrate this concern. The requirement for MCR appears consistent with the Level 1 text.	
315.	UNESPA (Association of Spanish Insurers)	3.47.	See 3.174	Noted.
316.	AAS BALTA	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	Not agreed. The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. Having regards to the comments made, CEIOPS does not consider that convincing arguments have been put forward as to why these limits are inappropriate. CEIOPS notes that an impact assessment is required, and will carry this out in due course together with the final advice. Not agreed. The calculation methods for the MCR and SCR are sufficiently clear for the limits to be established.
317.	AB Lietuvos draudimas	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be	See comment to 316.

			reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	
318.	CEA, ECO-SLV-09-441	3.48.	See comment to 3.174.	Noted.
319.	CFO	3.48.	The proportion of Tiered capital in eligible own funds required for compliance has changed from those stated in the Directives without justification. In the Directive, the proportion of Tier 1 capital in eligible own funds is required to be at least 33%. In the level 2 implementation measures, this has changed to 50%. However, there is no justification for the change. We do not believe there is any reason to deviate from the Directive. Similarly, the proportion of Tier 3 elements required has been reduced below the 33% stated in the Directive to be a maximum of 15%. Again, there is no justification for the change and we do not believe it to be appropriate. Also, the value of Tier 1 capital items can be very volatile in times of stressed markets with the Tier 2 and 3 elements relatively more stable. This warrants a more flexible approach (as included in the Directive) and we believe the suggested approaches are too restrictive. It is difficult to comment upon limits before all own funds items have been classified into Tiers in detail. However it seems that with the very narrow interpretation of the term “substantially” in 3.27 and the very narrow interpretation in 3.98 and 3.99, several own funds items run the risk of being completely excluded from Tier 1 (equalisation and similar reserves, hybrid capital items). The	See comment to 316. Not agreed. Loss absorbency is the key characteristic for own funds.

			harsher limits imposed for own funds in the implementing measures compared to the Directive might be unjustifiable and improper in relation to the risks covered.	
320.			Confidential comment deleted	
321.	CRO Forum	3.48.	See our comment on §3.173	Noted.
322.	DENMARK: Codan Forsikring A/S (10529638)	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	See comment to 316.
323.	DIMA (Dublin International Insurance & Management	3.48.	The CEIOPS recommendation for Tier 1 items to be more than 50% of the eligible own funds and Tier 3 to be in range of 5 to 25% will be burdensome on captive insurance and reinsurance companies. Although captives are well capitalised, the requirement for Tier 1 items to be more than 50% of total own funds could see many captives facing solvency issues. The Solvency II text principles should be followed, which require Tier 1 to be more than 33.3 % of the own funds item.	The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased. Having regard to the comments made, CEIOPS does not consider that convincing arguments have been put forward as to why the proposed limits are inappropriate given the need for the SCR and MCR to be met with own funds of an appropriate quality and so it proposes to retain the limits set out in CP 46.

324.	Groupe Consultatif	3.48.	The maximum proportion of 15% proposed for tiers 3 eligible own fund is too low particularly if the conditions to classify an own fund item in tiers 2 are very close to the one used to classify in tiers 1 (which seems to be the case in this CP). A limit of 25% seems to be more appropriate.	Not agreed. See response to comment 323. Taking into account the requirements for eligible own funds proposed in the advice, the 15% limit seems sensible.
325.	Institut des actuaires (France)	3.48.	The maximum proportion of 15% proposed for tiers 3 eligible own fund is too low particularly if the conditions to classify an own fund item in tiers 2 are very closed to the one used to classify in tiers 1 (which seems to be the case in this CP). A limit of 25% seems to be more appropriate.	Not agreed. See response to comment 323. Taking into account the requirements for eligible own funds proposed in the advice, the 15% limit seems sensible.
326.	KPMG ELLP	3.48.	(a) The proposed limits on different tiers of capital are more onerous than those set out in the Level 1 text. We note that tier 1 capital could be volatile (since it includes accumulated reserves valued on a Solvency II basis). In times of loss, these proposed limits would result in a more severe reduction in total Own Funds than would be seen under the Level 1 text. This would also make it more difficult to raise additional capital within the limits applying. Using an example, suppose A had Own Funds of 200, split tier 1 capital of 105, tier 2 capital of 80 and tier 3 capital of 15. If it made a loss of 20, its tier 1 capital would reduce to 85. Using the Level 1 text limits, this would be the only reduction in the overall Own Funds. However, using the limits proposed in the CP, the reduction in tier 1 capital to 85 would mean that the total of tier 2 and tier 3 capital could not exceed 85, so A's Own Funds would reduce to 170 as a result of the 10 loss . In addition, A's tier 3	Not agreed. See comment to 316.

			capital would now exceed the limit of 12.75 (15%*85), so there would be no capacity to raise additional short duration capital to offset the strains caused. Due to this adverse impact in times of stress, we do not agree with the proposed tightening of the Level 1 limits. (b) We believe that the terminology in this paragraph, taken with the other paragraphs 3.49 to 3.57 is potentially confusing. Where CEIOPS uses the word 'compliance', we believe that 'coverage' may be a better articulation of what we believe is meant.	Not agreed. "Compliance" is a better articulation than "coverage"
327.	Link4 Towarzystwo Ubezpieczeń SA	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	See comment to 316. The calculation methods for the MCR and SCR are sufficiently clear for the limits to be established.
328.	Lloyd's	3.48.	We consider that the new proposals are excessive and arbitrary, particularly in conjunction with the potential restrictions on the eligibility of hybrid instruments set out elsewhere in this paper. The requirement for the proportion of Tier 1 capital to cover the SCR of at least 50% (or as some members have suggested, at least 60%), is significantly more onerous than the 1/3 minimum proposed in the Directive. An unduly high requirement in this respect will reduce insurers' flexibility over their capital arrangements and this will, in turn, reduce the competiveness of the European insurance industry.	Not agreed. See comment to 316.
329.	NORWAY: Codan	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will	Not agreed. See comment to 316.

	Forsikring (Branch Norway) (991 502		be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	
330.	OAC Actuaries and Consultants	3.48.	A requirement setting a minimum level of tier 1 and a maximum level of tier 3 would be prefererable to allow the use of tier 3 in the absence of tier 2 capital (which may be harder to raise in the current climate than tier 3. It is suggested that appropriate percentages would be 50% and 25% respectively.	Not agreed. See response to comment 316. Also see response to comment 311
331.	Pricewaterho useCoopers LLP	3.48.	A requirement setting a minimum level of Tier 1 and a maximum level of Tier 3 would be preferable to allow the use of Tier 3 in the absence of Tier 2 capital (which may be harder to raise in the current climate than Tier 3).	Not agreed. See response to comment 316. Also see response to comment 311
332.	RSA Insurance Group PLC	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	Not agreed. See comment to 316.
333.	RSA Insurance Ireland Ltd	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	Not agreed. See comment to 316.
334.	RSA\32\45\32Sun	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will	Not agreed. See comment to 316.

	Insurance Office Ltd.		be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	
335.			Confidential comment deleted	
336.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.48.	Implies relatively low issuance capacity for Tier 2 and Tier 3 instruments. While capacity for issuance of Tier 1 is high, there will be little market appetite and higher pricing. The proposed limits for Tier 2 and Tier 3 are less than in Level 1 text and should be reviewed / consulted upon once calculation methods for MCR and SCR become clear. The current impact of the proposed limits is unknown.	Not agreed. See comment to 316.
337.	UNESPA (Association of Spanish Insurers)	3.48.	See 3.174	Not agreed. See comment to 316.
338.	CEA, ECO-SLV-09-441	3.49.	See comment to 3.174.	Not agreed. See comment to 316.
339.	OAC Actuaries and Consultants	3.49.	This meaning of this paragraph is unclear. Is it effectively saying that given that MCR is calibrated at 45% of MCR and SCR should be covered 50% by tier 1, then MCR is automatically covered by tier 1.	Noted. This is correct.
340.	PricewaterhouseCoopers LLP	3.49.	The meaning of this paragraph is unclear. Is it effectively saying that given that MCR is calibrated at 45% of MCR and SCR should be covered 50% by Tier 1, then MCR is automatically covered by Tier 1?	Noted. This is correct.

341.	KPMG ELLP	3.50.	This diagram is helpful to a degree but does not explain the order in which Own Funds are used for coverage of the SCR. So, in this example, what does the excess of 20 comprise - tier 1, 2 or 3 elements? This could have implications for the group solvency assessment, both in respect of the transferability of capital and also in respect of the limits that apply to Group Own Funds.	Not agreed. Not purpose of example
342.	Pricewaterhouse Coopers LLP	3.50.	Further to the comments on paragraph 3.47 above, in the example given in this paragraph the entity covers its SCR by a mixture of Tiers 1, 2 and 3. Consider an alternative entity which rather than having Tier 1 of 50 and Tier 2 of 35 had instead Tier 1 of 85 and Tier 2 of zero (with the Tier 3 being unchanged). This entity would appear unarguably to have a stronger capital base (the only change being 35 of Tier 2 being replaced with the same amount of higher quality Tier 1 capital). However, based on the restrictions proposed in paragraph 3.47 this entity would be unable to count any Tier 3 towards its SCR and so be unable to cover its SCR as required by the proposed rules. The proposed restrictions therefore require reconsidering to ensure that such counterintuitive results are not achieved (for example by basing any limit on the use of Tier 3 on the aggregate of Tier 1 and eligible Tier 2 rather than on eligible Tier 2 alone).	See response to CommentComment 311
343.	OAC Actuaries and Consultants	3.51.	If the proportions in the example in 3.50 were altered to 45%, 40% and 15% the SCR coverage would be breached but not the MCR coverage which is still entirely covered by tier 1. However it is agreed that below that level a simultaneous breach of both SCR and MCR coverage would occur.	Noted.
344.	Pricewaterhouse Coopers LLP	3.51.	If the proportions in the example in 3.50 were altered to 45%, 40% and 15% the SCR coverage would be breached but not the MCR coverage which is still entirely covered by Tier 1. However it is agreed that below that level a simultaneous breach of both SCR	Noted.

			and MCR coverage would occur.	
345.	CFO	3.52.	MCR and SCR should be examined in total rather than as a percentage of Tiered capital. We agree that there should be a minimum ratio for MCR relative to SCR to allow a sufficient useful ladder of intervention approach. However we recommend that this is examined in total rather than as a percentage of Tiered capital. Comments in 3.48 are also relevant here.	Not agreed. Inconsistent with the Directive text.
346.	CRO Forum	3.52.	See our comment on §3.175	Noted.
347.	DIMA (Dublin International Insurance & Management	3.52.	For MCR Tier 1 items, 80% requirement is against the Solvency II directive text's true spirit as well as cumbersome for small undertakings and captives. If the deviation from Solvency II to protect insurance and reinsurance undertakings is required then following principles of proportionality captives and small insurers undertakings should be excluded from this requirement.	Not agreed. Comment is unclear and appears inconsistent with L1 text. Capital quality should not be compromised on the grounds of size. Proportionality is addressed through the capital requirements.
348.	KPMG ELLP	3.52.	(a) We agree that a simultaneous breach of the SCR and MCR where possible and therefore agree with the approach to introduce a ladder of intervention. (b) However, we find the example confusing as the second column does not obey the proposed tiered capital limits set out in paragraphs 3.47 and 3.48 of the CP. In this example, if tier 1 capital has reduced to 30, then tier 3 capital of 35 would need to reduce to no more than 30 (to ensure tier 1 exceeds tier 2) and tier 3 would need to reduce to 10.5 (to ensure tier 3 is no more than 15% of eligible own funds). This would result in the SCR of 100 being breached by 29.5 (not 20 as shown).	Noted. For simplicity it focuses on the T1 effect of simultaneous breach of the MCR and SCR, and not the consequential impact on eligibility of T2 and T3
349.	Lloyd's	3.52.	The proposal to require that at least 80% of the MCR must be covered by Tier 1 basic own funds is arbitrary and set out with no	See response to comment 316

			justification; we recommend the 50% minimum as set out in the Directive be retained.	
350.	OAC Actuaries and Consultants	3.52.	A lower MCR coverage by tier 1 than 100% would therefore be preferable. However the 80% proposed is higher than that currently in article 98.2 of the Directive.	Agreed that lower than 100% T1 coverage of MCR is preferred. See comments of 316.
351.	PricewaterhouseCoopers LLP	3.52.	A lower MCR coverage by Tier 1 than 100% would therefore be preferable. However the 80% proposed is higher than that currently in article 98.2 of the Directive and CEIOPS should clearly rationalise the basis for selection of this level.	Agreed that lower than 100% T1 coverage of MCR is preferred. See comments of 316. CEIOPS notes that an impact assessment is required, and will carry this out in due course as part of its final advice.
352.	OAC Actuaries and Consultants	3.58.	The wording should read assets over liabilities rather than assets of liabilities.	Agreed. Change will be made
353.	PricewaterhouseCoopers LLP	3.58.	The wording should read “assets over liabilities” rather than “assets of liabilities” and in the second sentence “own funds” should read “basic own funds”.	Agreed. Change will be made
354.	CEA, ECO-SLV-09-441	3.60.	See comment to 3.176.	Noted. See response to Comment 266
355.	KPMG ELLP	3.60.	As stated in 3.40, we agree with CEIOPS that there should be some minimum qualitative requirements for Tier 3 capital, notwithstanding that this goes beyond the Level 1 text. We therefore concur with the suggested requirements in 3.60 to 62.	Noted and agreed.
356.	OAC	3.60.	It is desirable that there should be supervisory prior approval of	Agreed

	Actuaries and Consultants		redemption.	
357.	PricewaterhouseCoopers LLP	3.60.	We agree that to qualify as Tier 3 basic own funds subordinated liabilities should demonstrate features to ensure that subordination is effective. However, there may be other ways of achieving this (via contractual terms governing payment of interest and repayment of capital) other than requiring supervisory approval for repayment. Potential providers of own funds would face uncertainty as to whether and when a supervisor may approve a repayment and this uncertainty may limit the availability of subordinated capital. Consideration should therefore be given to defining circumstances when subordination would be effective without, in all cases, requiring supervisory approval of any repayment (for example by only requiring supervisory approval in cases of a proposed repayment by the insurer prior to the contractual redemption date).	Noted.
358.	CFO	3.61.	We agree with this statement however, we note that ordinary shareholders have the ability to force the undertaking to unwind.	Noted
359.	CRO Forum	3.61.	We agree with this statement but we note that providers of ordinary shares have the ability to force the undertaking to unwind.	Noted
360.	KPMG ELLP	3.61.	See 3.60	Noted and agreed
361.	OAC Actuaries and Consultants	3.61.	There may be practical difficulties in requiring implementing this recommendation.	Noted.
362.	PricewaterhouseCoopers	3.61.	There may be practical difficulties in implementing this recommendation as it may impinge on the legal rights of the	Noted.

	LLP		providers of own funds.	
363.	Association of British Insurers	3.62.	See comments under 3.180	Noted. See response to comment 370
364.	CRO Forum	3.62.	See our comments on §3.180	Noted. See response to comment 370
365.	Groupe Consultatif	3.62.	(minimum characteristics for own funds): Agree with the principle that any redemption, conversion or exchange of capital instruments must be subject to prior supervisory approval (important to emphasize it).	Noted and agreed
366.	KPMG ELLP	3.62.	See 3.60	Noted and agreed
367.	Pearl Group Limited	3.62.	It is unclear why prior supervisory approval should be systematically required before any redemption, conversion or exchange of capital instruments, in particular on ongoing concern basis. We do not understand why changes in the nature of the instrument in particular when this have been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-approval. A requirement for prior regulatory approval, regardless of the regulatory capital position of a firm, is unduly restrictive and burdensome. Whilst a firm complies with its regulatory capital requirements, it should be able to manage its financial and capital position without the need for prior supervisory approval. It is not clear whether the requirement for regulatory approval also applies to ordinary shares. If not, the requirements for hybrids would be more restrictive than those for ordinary shares.	Not agreed

			In cases where the MCR has been breached, we recommend that a time limit of one month is set under level 2 for supervisors to render their decision.	
368.	PricewaterhouseCoopers LLP	3.62.	See comments on 3.60.	
369.			Confidential comment deleted	
370.	CFO	3.63.	Own funds should not be required to have the same duration as the longest liabilities. We do not interpret Article 93 (2) of the level 1 text to mean that own funds should have the same duration as the longest liability. We believe the purpose of available surplus is to act as a buffer in the case of deterioration - it is an addition to the amount of assets backing insurance liabilities. The discussion on the Tiers views own funds as an additional amount of assets backing the technical provisions and as a result defines the sufficiency of, for example, Tier 1 capital in relation to matching the liability durations. The underlying concept of Solvency II is that the SCR is an amount that represents the effect of a one-year shock with an occurrence of 1 in 200 years. When such an event occurs, the insurer should have sufficient assets to transfer its liabilities to another party. Conceptually, this means that the funds available should remain available for at least one year. While we agree that available surplus needs to be available to fully absorb losses on a going concern basis as well as in the case of winding-up (article 93 (1a) of Level 1 text), we do not interpret this as a requirement that Tier 1 capital should have a duration equal to the longest dated	Agreed. Approach modified Combination of safeguards arising on the proposed restrictions on the amount of hybrids and the criteria as to their features means that CEIOPS is satisfied that the sufficient duration of own funds instruments called for by the Level 1 text is achieved through the benchmark minimum maturities proposed in the draft advice i.e. 10 years for T1, 5 years for T2, and 3 years for T3. CEIOPS continues to believe that the duration of the capital instrument is defined as the period to the first contractual possibility to repay the instrument. The benefit of this is that it is simpler to apply, more

			insurance liability. Also, for any duration mismatch between assets and liabilities, an SCR charge has to be taken and as such this issue should not be considered under the calculation of own funds. Further, we note that the reference to duration is made in the context of a book value type approach. We believe this concept and requirements are not valid when applying as market consistent approach. In addition, we note that the requirements as drafted indicate that full Tier 1 capital needs to be held at the longest liability duration, and not having regard to the fact that a portfolio will run-off gradually. Hence a weighting based on maturity durations would be more appropriate.	transparent, and poses no threats given the other restrictions made to own funds. Own funds items with an incentive to redeem should be excluded from Tier 1. The ability to have dated instruments supersedes the need for step ups which increase cost at a time when the undertaking may be in stress.
371.	CRO Forum	3.63.	See our comments on §3.181	Agreed. See response to comment 370
372.	KPMG ELLP	3.63.	As stated in 3.70, we do not agree with the concept of linking the duration of Own Fund instruments with the duration of (re)insurance obligations.	Agreed. See response to comment 370
373.	Moody's Investors Service	3.63.	In its classification of hybrid securities, Moody's would not typically follow the approach suggested, namely that the appropriate duration of a hybrid should be governed by the maturity of the insurance policyholder obligations of the particular insurer. Firstly, this would mean a move away from standardisation of instruments across issuers and reduce transparency. In addition, it is not clear how the term of the insurance liabilities would be calculated – either contractual maturity dates or projected cash flows. For many classes of insurance, for example Asbestosis risks, the maturity profile of the liabilities is extremely unclear. It is also not clear what the impact on the classification of the hybrid would be if the maturity profile of the issuer were to significantly change post	Agreed. See response to comment 370

			issuance of the hybrid - for example if a short-tail motor insurer were to start writing a long-tail liability book.	
374.			Confidential comment deleted	
375.	Munich RE	3.64.	Reference point has to be the issue date => a reporting-date base would result in an undertaking´s own funds' having a shifting profile, which would be too complex to administer and interpret. In addition it would be economically inefficient from an issuer's perspective, as the issuer would have to pay, for example, the higher cost for Tier 1 capital, even if it were no longer eligible as Tier 1.	See response to comment 370
376.	KPMG ELLP	3.66.	See 3.68	See response to comment 370
377.	PricewaterhouseCoopers LLP	3.66.	We concur that a reporting date approach is logical.	See response to comment 370
378.	KPMG ELLP	3.67.	See 3.68	See response to comment 370
379.	OAC Actuaries and Consultants	3.67.	A reporting date basis is currently maintained in the UK and potentially only involve revision downwards of a year form existing instruments. Given the low percentage currently in issue by insurers this would appear to be less of an issue than envisaged.	See response to comment 370
380.	PricewaterhouseCoopers LLP	3.67.	A reporting date basis is currently maintained in certain Member States (e.g. the UK) which suggests that the potential difficulties in administering and interpreting are not insurmountable. Given the low percentage of Tier 2 and Tier 3 own funds currently in issue (paragraph 3.11) by insurers this may be less of an issue than envisaged.	See response to comment 370
381.	AAS BALTA	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	See response to comment 370
382.	AB Lietuvos	3.68.	Agree that an issue date basis is appropriate rather than the	See response to comment 370

	draudimas		reporting date approach.	
383.	Association of British Insurers	3.68.	See comments under 3.181 and 3.191 Although the absence of a step-up on the first call date increases the financial flexibility of the issuer and therefore the capital quality of the instrument, we do not consider that the presence of a step-up negates the capital quality of the instrument. Innovative tier 1 instruments with step ups have absorbed huge losses since the beginning of the financial crisis and have proved their capital quality. Therefore, we disagree with the proposed requirement that tier 1 instruments should not include a step-up.	Not agreed. Subsequent to this CEIOPS agreed to clarify the definition of an incentive to redeem as a combination of a call option with anything that incentivises the issuer to retire the instrument. In addition the ability to have dated instruments supersedes the need for step ups which increase cost at a time when the undertaking may be in stress.
384.			Confidential comment deleted	
385.	CFO	3.68.	Comments in 3.63, 3.73 and 3.85 are also relevant here.	See response to comment 383.
386.	CRO Forum	3.68.	Although the absence of a step-up on the first call date increases the financial flexibility of the issuer and therefore the capital quality of the instrument, we do not consider that the presence of a moderate step-up completely negates the capital quality of the instrument.	Noted
387.	DENMARK: Codan Forsikring A/S (10529638)	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	Noted
388.	Groupe Consultatif	3.68.	Paragraph 3.73 states that “When determining duration, the time horizon must be the expected duration, or anticipated duration over the next twelve months.” Please clarify how this should be read in	Noted. See response to commentcomment 370

			relation to paragraph 3. 68 ("CEIOPS considers that an issue date basis would provide an appropriate Framework") and 3.73 ("The duration of the capital instrument is defined as the first contractual possibility of repayment").	
389.	Institut des actuaires (France)	3.68.	Paragraph 3.73 states that "When determining duration, the time horizon must be the expected duration, or anticipated duration over the next twelve months." Please clarify how this should be read in relation to paragraph 3. 68 ("CEIOPS considers that an issue date basis would provide an appropriate Framework") and 3.73 ("The duration of the capital instrument is defined as the first contractual possibility of repayment").	Noted. See response to comment 370
390.	KPMG ELLP	3.68.	(a) Whilst the use of issue date provides a degree of clarity, it seems counterintuitive to assume that two identical instruments of 10 year duration should be seen as equally loss absorbent if one is repayable next year and the other in 9 years time. Given the aim of Own Funds is to provide a buffer against unexpected adverse movements, with a view to policyholder protection, we would expect more credit to be given to the instrument that will remain in place for the longest future duration. As such, although a reporting date basis may be harder for insurers to manage, we believe this may offer better policyholder protection. In addition, we would expect capital management policies under Solvency II to be able to determine this type of profile analysis as replacement of financing that is coming near the end of its term will be a consideration for all insurers. (b) In respect of the first bullet, we agree that capital instruments should not be freely redeemable (or coupons freely available) if the SCR is breached (or foreseen to be breached). However, we do not agree that this should occur if solvency is deteriorating (or foreseen to deteriorate) if the SCR is still fully covered (and foreseen to	Noted

			remain so). Guidance should also be provided regarding the extent of foresight required, and the basis for this, to ensure consistent application across entities. We would envisage this being linked with the ORSA requirements. (c) See 3.75 for comments on tier 3 minimum duration.	
391.	Link4 Towarzystwo Ubezpieczeń SA	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	Noted. See response to comment 370
392.	Lloyd's	3.68.	The rationale for excluding hybrid instruments with an incentive to redeem from Tier 1 is unclear; an incentive to redeem (belonging to the issuer) does not weaken the instrument's availability to meet losses.	Not agreed. See response to comment 383. An incentive to redeem incentivises the issuer to retire the instrument.
393.	Munich RE	3.68.	Incentive to redeem: CEBS allows moderate incentives to redeem; no level-playing field ! [see also 3.185]	Noted.
394.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	Noted. See response to comment 370
395.	OAC Actuaries and Consultants	3.68.	It might be necessary for there to be transitional arrangements to ensure that some instruments are grandfathered – it may not be practical to require existing instruments to contain a requirement that supervisory approval be obtained before redemption or coupons are paid.	Level 1 does not specify powers for Level 2 implementing measures for transitional arrangements with respect to own funds, which is why this issue was not included in the draft advice. As such CEIOPS did not consider it part of its mandate to provide

				advice on potential transitional measures. Further discussion is required on whether the final advice makes reference to possible transitional provisions.
396.	Pearl Group Limited	3.68.	We agree with the statement that the issue date is the appropriate basis for assessing whether an instrument has sufficient duration. Although the absence of a step-up on the first call date increases the financial flexibility of the issuer and therefore the capital quality of the instrument, we do not consider that the presence of a step-up negates the capital quality of the instrument. Innovative tier 1 instruments with step ups have absorbed huge losses since the beginning of the financial crisis and have proved their capital quality. Therefore, we disagree with the proposed requirement that tier 1 instruments should not include a step-up.	Not agreed. See comments in 383
397.	PricewaterhouseCoopers LLP	3.68.	It might be necessary for there to be transitional arrangements to ensure that some instruments are grandfathered – it may not be practical to require existing instruments to contain a requirement that supervisory approval be obtained before redemption or coupons are paid. See also the comments on paragraph 3.60 regarding the proposed need for prior supervisory approval for redemption. If the intention is that supervisory approval is required for any redemptions (including those at normal maturity of the instrument) this would effectively make all items of own funds of indeterminate length at the option of the relevant supervisor (irrespective of other contractual terms). This may limit the availability of capital and effectively make redundant the proposals elsewhere in the consultation regarding the maturity terms of capital.	Noted. See response to comment 395

398.	RSA Insurance Group PLC	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	See response to comment 370
399.	RSA Insurance Ireland Ltd	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	See response to comment 370
400.	RSA\32\45\32Sun Insurance Office Ltd.	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	See response to comment 370
401.			Confidential comment deleted	
402.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.68.	Agree that an issue date basis is appropriate rather than the reporting date approach.	See response to comment 370
403.	UBS	3.68.	Requiring that a scheduled coupon payment date or redemption price at the call date may not be made “when an undertaking’s solvency position is deteriorating, or is foreseen to deteriorate” is vague and it would be helpful for investors to understand the specific circumstances which could reflect this; so, for example, it would be optimal to list specific triggers when such coupons or redemption payments may not be made so investors can make a credit and solvency assessment as to the likelihood of such event occurring and make an investment, accordingly.	See response to comment 370
404.	AMICE	3.69.	We do not share CEIOPS views on the need to develop Level 2 measures directly linking the duration of capital instruments with the duration of liabilities.	Agreed. See response to comment 370

405.	Association of British Insurers	3.69.	See comments under 3.191	Agreed. See response to comment 370
406.	CFO	3.69.	The duration of liabilities should be based on projected cash flows for non-life insurance companies. For non-life insurance companies, an approach based on projected cash flows is most appropriate as a large proportion of the liabilities are IBNR (incurred but not reported) reserves and as such based on statistical estimates rather than contract by contract consideration.	See response to comment 370
407.	CRO Forum	3.69.	See our comment on §3.73	See response to comment 370
408.	KPMG ELLP	3.69.	To avoid differing analyses of the duration of liabilities, we would propose that this is made consistent with the IFRS maturity analysis (expected cash flows).	See response to comment 370
409.	ROAM –	3.69.	We do not agree with the need of developing level 2 measures directly linking the duration of capital instruments with the duration of liabilities	Agreed. See response to comment 370
410.	CEA, ECO-SLV-09-441	3.70.	See comment to 3.183.	See response to comment 370
411.	CFO	3.70.	Comments in 3.63 and 3.69 are also relevant here.	See response to comment 370
412.	CRO Forum	3.70.	As mentioned in our response to § 3.186 we agree with the recommended duration per Tier (10 years for Tier 1; 5 years for Tier 2 and 3 years for Tier 3). However, we do not agree with the discussion in this paragraph 3.70, for the following reasons: While we agree that available surplus needs to be available to fully absorb losses on a going concern basis as well as in the case of	See response to comment 370

			winding-up (article 93 (1a), we do not interpret this as a requirement that Tier 1 capital should have a duration equal to the longest dated insurance liability as discussed in this paragraph and in 3.93 and advised in paragraph 3.183. There should not be a problem if the liabilities are running off at least as fast as the capital matures. Given the nature of capital backing surplus, the general requirement on overall duration, we believe that an approach for tier one based on the longest duration liability is overly conservative, and would likely be impractical in terms of the capital markets ability to provide such long dated instruments. We suggest that using the average weighted liability maturity, and 10 year minimum would be sufficient specific conditions for tier one capital As an example to illustrate our view: Some life insurance liabilities are very long-dated, such that the minimum maturity can be 50 years or more. As currently written, the CP would require finding a hybrid tier 1 with a call date in 50 years, which is effectively not marketable instrument.	
413.	KPMG ELLP	3.70.	We do not agree with the proposal to define the minimum duration of tier 1 capital by reference to the longest dated insurance liability. For a life insurer writing very long term policies (such as whole of life contracts or annuity contracts) this could result in minimum maturity periods that could easily exceed 50 years. In a run-off situation, this would result in any tier 2 and tier 3 capital ceasing to count as Own Funds as time progresses, to leave just tier 1 capital covering the longest liabilities. The capital no longer eligible for Own Funds classification could also need to be treated as regulatory liabilities, worsening the solvency position of the company. Whilst we agree with the concept that there must be a sufficient capital buffer to ensure that all policyholders are protected,	Agreed. See response to comment 370

			regardless of when they fall for repayment, we believe an alternative approach based on a weighted approach using an average duration analysis of the policyholder liabilities portfolio may be preferable.	
414.	Lloyd's	3.70.	The paper appears to view own funds as an additional amount of assets backing the technical provisions and as a result defines the sufficiency of for example Tier 1 capital in relation to matching the longest liability durations. We consider however that the purpose of available surplus (ie to cover the SCR) is to have a buffer in case of deterioration, on top of the amount of assets backing insurance liabilities (in this case at the 99.5% VaR Solvency II requirement). While we agree that available surplus needs to be available to fully absorb losses on a going concern basis as well as in the case of winding-up, we do not interpret this as a requirement that Tier 1 capital should have a duration equal to the longest dated insurance liability. There should not be a problem if the liabilities are running off at least as fast as the capital matures.	Agreed. See response to comment 370
415.			Confidential comment deleted	
416.	CEA, ECO-SLV-09-441	3.71.	We fully support the view of some Ceiops members that taking the maturity of the longest dated insurance liability of tier 1 would result in overstating the duration. Especially in life insurance parts of the business are very long term (duration of certain contracts could exceed 50 years), but also in non-life small parts of the business could result in a very long duration which would have to be considered for tier 1 instruments.	Agreed. See response to comment 370
417.	CFO	3.71.	Comments in 3.69 are also relevant here.	See response to comment 370
418.	German Insurance Association	3.71.	Not overstating duration of insurance liabilities We fully support the view of some CEIOPS members that taking the maturity of the longest dated insurance liability of tier 1 would	Agreed. See response to comment 370

	– Gesamtverb and der D		result in overstating the duration. Especially in life insurance parts of the business are very long term (duration of certain contracts could exceed 50 years), but also in non-life small parts of the business could result in a very long duration which would have to be considered for tier 1 instruments.	
419.	OAC Actuaries and Consultants	3.71.	An approach based on cash flows would be more likely to give a realistic duration.	See response to comment 370
420.	AAS BALTA	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	Agreed. See Comments on 370
421.	AB Lietuvos draudimas	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	Agreed. See response to comment 370
422.	CEA, ECO-SLV-09-441	3.72.	See comment to 3.183.	See response to comment 370
423.	CFO	3.72.	Comments in 3.69 are also relevant here.	See response to comment 370
424.	DENMARK: Codan Forsikring A/S (10529638)	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	See response to comment 370
425.	European Union member firms of	3.72.	Duration of capital instruments Paragraph 3.72 notes that CEIOPS welcomes views on limits on the duration of capital instruments. We support the benchmark limits on duration of capital and the overall requirement to assess the	See response to comment 370

	Deloitte Touche To		duration of capital on an ongoing basis in the ORSA. However we have some comments on the detailed requirements set out in paragraphs 3.182 and 3.187	
426.	Groupe Consultatif	3.72.	Defining the minimum duration of Tier 1 instrument as the maturity of the longest dated insurance liability would result in an overstated duration and is in complete contradiction with the proportionality principle (the risk resulting from the longest dated insurance liability is not likely to be material at the entity level). It would also be highly unpractical as the maturity of the longest dated insurance liability will often be difficult to assess.	Agreed. See response to comment 370
427.	Institut des actuaires (France)	3.72.	Defining the minimum duration of Tier 1 instrument as the maturity of the longest dated insurance liability would result in an overstated duration and is in complete contradiction with the proportionality principle (the risk resulting from the longest dated insurance liability is not likely to be material at the entity level). It would also be highly unpractical as the maturity of the longest dated insurance liability will often be difficult to assess.	Agreed. See response to comment 370
428.	Link4 Towarzystwo Ubezpieczeń SA	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	Agreed. See response to comment 370
429.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	Agreed. See response to comment 370
430.	RSA Insurance	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted	Agreed. See response to comment 370

	Group PLC		average or an approach based on projected cash flows.	
431.	RSA Insurance Ireland Ltd	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	Agreed. See response to comment 370
432.	RSA\32\45\32Sun Insurance Office Ltd.	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	Agreed. See response to comment 370
433.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.72.	Equity should cover the smaller amounts of very long dated liabilities and hybrid debt should therefore be based on a weighted average or an approach based on projected cash flows.	Agreed. See response to comment 370
434.	UNESPA (Association of Spanish Insurers)	3.72.	See 3.183	See response to comment 370
435.	CFO	3.73.	The duration of the capital instrument should be defined as the time to maturity. As the first call date is completely optional and subject to approval from supervisory authorities, the duration of the capital instrument should be taken as the time to maturity.	Not agreed, duration is contractual opportunity of repayment of instrument. Also see other comments of 370
436.	CRO Forum	3.73.	See our comment on §3.185	See response to comment 370
437.	Groupe Consultatif	3.73.	“The duration of the capital instrument is defined as the first contractual possibility of repayment.” To be classified as Tier 1 and Tier 2, an instrument must be redeemable at the option of the undertaking (i.e (i.e. not at the option of the holder) and any	Not agreed, see response to comment 435.

			redemption should be subject to the approval of the supervisory authority. Taking this into account, the restriction to the first contractual possibility of repayment does not appear appropriate. "When determining duration, the time horizon must be the expected duration, or anticipated duration over the next twelve months." Please clarify how this should be read in relation to paragraph 3. 68 ("CEIOPS considers that an issue date basis would provide an appropriate Framework") and 3.73 ("The duration of the capital instrument is defined as the first contractual possibility of repayment").	
438.	Institut des actuaires (France)	3.73.	"The duration of the capital instrument is defined as the first contractual possibility of repayment." To be classified as Tier 1 and Tier 2, an instrument must be redeemable at the option of the undertaking (i.e (i.e. not at the option of the holder) and any redemption should be subject to the approval of the supervisory authority. Taking this into account, the restriction to the first contractual possibility of repayment does not appear appropriate. "When determining duration, the time horizon must be the expected duration, or anticipated duration over the next twelve months." Please clarify how this should be read in relation to paragraph 3. 68 ("CEIOPS considers that an issue date basis would provide an appropriate Framework") and 3.73 ("The duration of the capital instrument is defined as the first contractual possibility of repayment").	Not agreed. See response to comment 435.
439.			Confidential comment deleted	
440.	Association of British Insurers	3.75.	See comments under 3.186	See response to comment 370
441.	CFO	3.75.	The approach suggested to define minimum terms per Tier with a	Agreed. See response to

			link to the longest-dated liability (Tier 1) or average weighted life of liabilities is inappropriate Firstly, some life insurance liabilities are very long-dated (e.g. 50 years). Thus it appears impossible to allow for a level playing field for life insurance/ multi-line insurance companies. Only very few investors would buy instruments with a minimum life of greater or equal to 10 years, making these instruments either non-sellable or rather expensive Moreover, the term structure of liabilities of insurance companies can change significantly over a time frame of a few years, yet the minimum life of the hybrid capital instrument would have to be determined at launch Furthermore, it seems inappropriate to solely focus on the longest dated liability, since this particular liability may represent only a miniscule fraction for the issuer's total liabilities In addition, market standardization for hybrid capital trades is the key to bringing down costs - it is not helpful to have different minimum terms for different issuers, or even different minimum terms for the same issuer as the maturity profile changes over life. Instead, the minimum term should be defined clearly in numbers of years as suggested by CEIOPS, but with no link to the minimum duration. Flexibility and regulatory prudence can be maintained by requiring regulatory consent (with as clearly as possible defined preconditions for when it is not granted) prior to any redemption. The CFO Forum views 3 years and 5 years as acceptable minimum lives for Tier 3 and Tier 2 respectively. Given the requirement for regulatory consent, we cannot see why hybrid Tier 1 should have a minimum life of 10 years. The typical Tier 1 structure tailored for	comment 370

			retail investors has a first call date after year 5, but no step-up. In the past, several issuers have refrained from exercising their call rights after year 5, because it was not economic to do so at the time, with no negative reputational impact. We are worried that a minimum life of 10 years would significantly reduce access to this significant investor pocket.	
442.	CRO Forum	3.75.	See our comment on §3.186	See response to comment 370
443.	DIMA (Dublin International Insurance & Management	3.75.	For captives, Tier 3 items should not have any time limit for redemption. The objective should be to allow such companies to use Tier 3 items and if excess then redeem them with supervisory approval. For captives, getting capital is easier than for other undertakings as parent companies will finance funds for captives to meet their solvency requirements.	Not agreed. Minimum benchmarks are required to link with L1 text requirement for sufficient duration
444.	International Underwriting Association of London	3.75.	We note that Tier 1 Capital should have a minimum maturity of ten years, or the longest dated insurance liability. For certain types of business, notably casualty business, the length of time for a potential liability to arise could be very significant. For example, asbestos exposures typically take up to 50 years to materialise after exposure. We would therefore query whether there may be sufficient long dated liabilities in existence to match all exposures in the market. As an example, the longest dated UK Gilt that can be purchased is of a 50 year maturity. Any liabilities exceeding 50 years could therefore create difficulties. Furthermore, it could be rather difficult to ascertain a fixed date for when the longest dated liability could possible mature. We would therefore query whether it might be more appropriate to refer to “duration” rather than “maturity”.	Agreed. See response to comment 370
445.	KPMG ELLP	3.75.	(a) We agree that some minimum maturity period should apply to all capital instruments eligible for Own Funds.	Noted.

			(b) We would question whether there should be some flexibility regarding the minimum duration for Tier 3 instruments. In times of severe stress, it may be easier for firms to raise capital if the duration of the instrument is less than 3 years. In this respect we note that some entities that were severely affected by the recent financial crisis and were assisted in one form or another by their local government (both within the EEA and outside) are already repaying significant amounts of the assistance received. This raises the question of whether a shorter minimum period could be applied in severe stress situations. We note in this respect that 3.77 of the CP raises the possibility of an application for shorter minimum periods (albeit in different circumstances).	Not agreed. Tier 3 capital is unlikely to be used for recapitalisation in times of stress.
446.	OAC Actuaries and Consultants	3.75.	The discrete minimum maturities are set at a reasonable level.	Noted.
447.	UNESPA (Association of Spanish Insurers)	3.75.	See 3.186	See response to comment 370
448.	Association of British Insurers	3.76.	See comments under 3.187	See response to comment 370
449.	CRO Forum	3.76.	See our comment on §3.70, 3.73	See response to comment 370
450.	OAC Actuaries and Consultants	3.76.	The use of maturities linked to liabilities may not be appropriate. Suggest that they be considered rather than used as a firm benchmark.	Noted. See comments under 370
451.			Confidential comment deleted	

452.	KPMG ELLP	3.77.	(a) As noted in 3.75, we support the setting of minimum benchmarks for duration of instruments issued for each Tier of Own Funds. We also agree that in certain circumstances, it should be possible, following supervisory approval, for instruments of a shorter duration that the minimums set out to be available for use by insurers. This provides a degree of clarity and certainty. (b) However, we believe that where such supervisory approval is granted, this information should be made public. We can foresee a situation where a niche insurer with short tail liabilities may be allowed to, say, include short dated hybrid instruments as a higher tier of Own Funds than an insurer writing a range of risks which include, but are not limited to, the same risks written by the niche insurer. This distorts the level playing field and some guidance may be required on how this could work in practice to prevent this.	Agreed. See response to comment 370
453.	OAC Actuaries and Consultants	3.77.	This flexibility is welcome although question whether it would be consistently applied.	See response to comment 370
454.	Association of British Insurers	3.78.	We disagree with the proposed requirement to publish separately an analysis of the duration of an undertaking's liabilities. This information could be commercially sensitive and the disadvantage to the insurer of its publication could be disproportionately larger than its benefit for the public.	Agreed. See response to comment 370
455.			Confidential comment deleted	
456.	CEA, ECO-SLV-09-441	3.78.	Publishing the results of such an assessment would be overly burdensome without any real benefit for external stakeholders. The statement here is not consistent with CP 58 (see footnote 24). The issue of reporting should be dealt with in CP 58. Delete: ~~"and would be disclosed to the public"~~.	See response to comment 370

457.	CFO	3.78.	Comments in 3.63 are also relevant here.	See response to comment 370
458.	CRO Forum	3.78.	The CP suggests to publish, on a regular basis, an analysis of the duration of own fund items. We suggest such the level of detail of disclosure be proportionate to their likely supervisory value, and that they are aligned with existing commercial practices (e.g. under IFRS4 para 38 & 39, and IFRS7 para's 39 and B11 to B16) to avoid disclosure of commercially sensitive information. IFRS 4 para 38: An insurer shall disclose information that enables users of its financial statements to evaluate the nature and extent of risks arising from insurance contracts. IFRS7 para 39 a/ An entity shall disclose a maturity analysis for financial liabilities that shows the remaining contractual maturities.	See response to comment 370
459.	KPMG ELLP	3.78.	We agree with the concept, but would note that there is no duration for ordinary shares. This could make it difficult/impossible to determine the average duration of capital instruments. If this is to form part of public disclosures (as CEIOPS suggests) then guidance will be required as to how ordinary shares (and if applicable reserves) are to be included within the assessment of the average duration of Own Funds.	See response to comment 370
460.	Pearl Group Limited	3.78.	We disagree with the proposed requirement to publish separately an analysis of the duration of our liabilities. This information could be commercially sensitive and the disadvantage to us of its publication is likely to be disproportionately larger than its benefit for the public.	See response to comment 370
461.	UNESPA (Association of Spanish Insurers)	3.78.	See 3.186	See response to comment 370

462.	AAS BALTA	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	See response to comment 370
463.	AB Lietuvos draudimas	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	See response to comment 370
464.	DENMARK: Codan Forsikring A/S (10529638)	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	See response to comment 370
465.	Link4 Towarzystwo	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up	See response to comment 370

	Ubezpieczeń SA		and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	
466.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	See response to comment 370
467.	RSA Insurance Group PLC	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	See response to comment 370
468.	RSA Insurance Ireland Ltd	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an	See response to comment 370

			ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	
469.	RSA\32\45\ 32Sun Insurance Office Ltd.	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	See response to comment 370
470.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.81.	3.81 -3.84. Equity does not have to be paid back and so absorbs unexpected losses, conversely, profits can increase tier 1 and can be used to reward shareholders. Similarly, hybrid debt is paid up and need not be redeemed (if perpetual) and cannot be redeemed without supervisory consent. In addition, coupons cannot be paid unless regulatory capital levels are maintained. As bondholders may therefore never get anything back they absorb losses on an ongoing basis and not just in a winding-up. CEIOPS seems to have missed this point entirely.	See response to comment 370
471.			Confidential comment deleted	
472.	Association of British Insurers	3.84.	If hybrid holders took the first loss after shareholders (as innovative T1 demonstrably does at the moment), the hybrids would serve to protect policyholders, senior creditors and therefore the solvency of the company – their purpose is not to protect shareholders.	Noted. Subordination, however, is only applicable in a winding up scenario. As stated in CP46 CEIOPS continues to see an inherent trade-off between the requirements for the quality of own funds eligible to cover capital requirements and the limit

				structure applicable to the tiers to which those own funds are allocated. Therefore, it is not proposed that the limit for Tier 1 be lowered below 50% or the characteristics for hybrids be weakened i.e. they should continue to be required to absorb losses first or rank *pari passu*, in going concern, with capital instruments that absorb losses first.
473.			Confidential comment deleted	
474.	CEA, ECO-SLV-09-441	3.84.	See comment 3.191 on subordination. We do not agree that introducing degrees of subordination in Tier 1 could provide a distinction in the quality of own funds in going concern. The degree of subordination does not impact the loss absorbency characteristics in a going concern. For access to liquidity (in senior format), levels of subordination for hybrid debt are of no concern to the potential providers of liquidity. For access to new capital, requiring additional levels of subordination makes it less likely that investors will be prepared to provide fresh capital (at best, investors are indifferent, since in case of insolvency, investors can expect to receive no cash whether they are only simply subordinated, or more deeply subordinated). The level of subordination has nothing to do with "investors" appetite to absorb losses". Investors do not have an appetite to absorb losses per se. If hybrid investors are required to bear a greater degree of risk (which they never want in itself), the	Noted. See response to comment 472.

			insurance company will need to compensate investors for this additional risk, implying higher cost of funding. There is no apparent reason for additional levels of subordination in our view.	
475.	CFO	3.84.	The degree of subordination does not impact the loss absorbency characteristics in a going concern. There appears to be confusion between issuers access to liquidity versus capital at a time of stress. For access to liquidity (in senior format), various levels of subordination for hybrid debt are of no concern to the potential providers of liquidity. For access to new capital, requiring additional levels of subordination makes it less likely that the investors will be prepared to provide fresh capital. At best, investors are indifferent, since in the case of insolvency, investors can expect to receive no cash whether they are only simply subordinated, or more deeply subordinated. Importantly, the level of subordination has nothing to do with "investors' appetite to absorb losses". Investors never have an appetite to absorb losses. If hybrid investors are required to bear a greater degree of risk, the insurance company will need to compensate investors, implying a higher cost of funding. There is no apparent reason for additional levels of subordination in our view.	Noted. See response to comment 472.
476.	CRO Forum	3.84.	Comments on §3.84 through 3.88 a/ The CP acknowledges, "the deepest subordination of Tier 1 is not necessary for policyholder protection in a winding up as such". This appears to set a very theoretical requirement on subordination such that it "could provide a distinction in the quality of own funds in going concern" and be "closely linked to the appetite of investors to absorb losses". b/ The CP further states (in § 3.86 – 3.88) that a requirement that capital instrument should "not hinder recapitalisation" means that T1 is restricted to ordinary share capital.	Noted. See response to comment 472.

			In our view, both arguments miss the point. Firstly, the presence of hybrids does not hinder recapitalisation – in fact, a re-capitalising entity may want to issue hybrid as part of its recapitalisation package. We have yet to see evidence that the existence of hybrids has hindered recapitalisation. And secondly, if hybrid holders took the first loss after shareholders (as innovative T1 demonstrably does at the moment), the hybrids would serve to protect policyholders, senior creditors and therefore the solvency of the company – their purpose is not to protect shareholders, so we fail to understand the desirability of shareholders not taking the first loss. Again, we do not view it possible to design hybrid Tier 1 in compliance with CEIOPS requirements.	
477.	European Union member firms of Deloitte Touche To	3.84.	Subordination of tier 1 capital Paragraph 3.84 notes that CEIOPS welcome views on the subordination of tier 1 capital. We support the view that tier 1 capital should be subordinated to all other capital and liabilities. However we question whether it is necessary for all tier 1 instruments other than ordinary share capital to rank "pari passu". Article 93 and 94 require tier 1 instruments to absorb losses in a going concern and a winding up but the directive does not require tier 1 instruments to be "pari passu" when absorbing losses on a going concern basis.	Noted. See response to comment 472
478.	German Insurance Association – Gesamtverb and der D	3.84.	We do not agree that introducing degrees of subordination in Tier 1 could provide a distinction in the quality of own funds in going concern The degree of subordination does not impact the loss absorbency characteristics in a going concern. For access to liquidity (in senior format), levels of subordination for hybrid debt are of no concern to	Noted. See response to comment 472

			the potential providers of liquidity. For access to new capital, requiring additional levels of subordination makes it less likely that investors will be prepared to provide fresh capital (at best, investors are indifferent, since in case of insolvency, investors can expect to receive no cash whether they are only simply subordinated, or more deeply subordinated). The level of subordination has nothing to do with "investors' appetite to absorb losses". Investors do not have an appetite to absorb losses per se. If hybrid investors are required to bear a greater degree of risk (which they never want in itself), the insurance company will need to compensate investors for this additional risk, implying higher cost of funding. There is no apparent reason for additional levels of subordination in our view.	
479.	OAC Actuaries and Consultants	3.84.	Unclear why it is desirable to mirror the banking regime with regard to deepest subordination given the additional costs undertakings would have to incur.	See response to comment 472
480.	Pearl Group Limited	3.84.	The presence of hybrids does not hinder recapitalisation – in fact, a re-capitalising entity may want to issue hybrid as part of its recapitalisation package.	Noted.
481.	Pricewaterho useCoopers LLP	3.84.	It is not clearly articulated why it is desirable to mirror the banking regime with regard to deepest subordination given the additional costs undertakings would have to incur. It is unclear the basis on which deepest subordination (as opposed to subordination) is consider to be a requirement of the Directive for an item to be classified as Tier 1.	See response to comment 472
482.			Confidential comment deleted	
483.	Solvency II Legal Group	3.84.	The case for requiring deepest subordination does not seem to us to be strongly made out, against the background that if an	See response to comment 472

	This response reflects the		undertaking should consider that it would enhance market confidence it could presumably make contractual provision for this purpose.	
484.	AAS BALTA	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital. Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	Disagreed. Step-ups incentivise the issuer to retire the instrument. Noted. Noted.
485.	AB Lietuvos draudimas	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital.	See response to comment 484.

			Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
486.	AMICE	3.85.	See our comments to paragraph 3.26.	Noted.
487.	Association of British Insurers	3.85.	See comments under 3.68 As currently drafted, tier 1 own funds must meet the key features set out in the CP. This is more onerous than the current rules and may lead to significant restructuring of own funds across the insurance sector which would be difficult and expensive in the current market. See also comments under 3.167	Noted.
488.	ASSOCIATIO N OF	3.85.	We believe that the subordination clause is too strong. We believe that the capital that should be allowed at tier 1 is that which would	Noted. See response to comment 472.

	FRIENDLY SOCIETIES		be fully available without constraint after a 1:200 stress. This would be less than the statement from CEIOPS on some capital types but would allow for hybrid capital if that capital was not reclaimable in the event of the SCR being breached.	
489.	CEA, ECO-SLV-09-441	3.85.	See comment to 3.191.	Noted.
490.	CFO	3.85.	3.85 (i): Given that Tier 1 capital is the capital generally required in the case of a going concern, more clarity is required in the description of subordination. 3.85 (ii): Loss absorbency should be defined in terms of market value rather than book value. This should be clearly stated in the text. 3.85 (iv): The text states that there should be no incentive to redeem. However, we recommend that a moderate coupon step-up (for example the maximum between 100bp and half of the spread at issue) should be allowed after 10 years from the issue date. Any redemption will require supervisory authority approval and the solvency of the issuer will be examined independently before the application of the step-up. The issuer would retain the option to redeem as the call date is optional. 3.85 (v): We agree that “at all times coupons/dividends must be able to be cancelled”. The additional requirements around fixed rates are unnecessary and should be removed. 3.85 (v): Deferral Trigger and linkage to the SCR are too conservative. Upon a breach of the SCR, CEIOPS suggests mandatory deferral in cases of a breach of the SCR for both Tier 1 (3.85 v.) and Tier 2	Noted.

			(3.113), and regulatory approval to all cash flows on Tier 3 (3.123). We view this as much too conservative, given the volatility that the SCR is likely to display. 3.85 (vi): Tier 1 & 2 shall be free of encumbrances. The CFO Forum agrees with this in general. According to the text in CP 46, only net financing (own funds received from a party A minus "back- funding" provided to that same party A) is considered as eligible own funds. We would argue for corresponding deductions to be made only in case the "back-funding" qualifies as own funds for party A. In addition, we note that this clause should relate only to inter-group funding-relationships, and not to intra-group funding-relationships.	
491.	CRO Forum	3.85.	See our comment on §3.191	Noted.
492.	DENMARK: Codan Forsikring A/S (10529638)	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital. Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its	See response to comment 485.

			coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
493.	Groupe Consultatif	3.85.	We consider that the required conditions to classify an eligible own fund in Tier 1 are too far from the current practice of the market. Particularly the "free from requirements or incentives to redeem" item seems to be difficult to reach. Indeed, most of subordinated debt issued by insurers embedded "a step up" feature after the first callable period. If this feature is considered as an incentive to redeem that means that most of subordinated debts of insurers will be downgraded to tier 2 (depending on the definition of moderate) or tier 3 capital (with a current proposed limit of 15%!). A change of the current practice (i.e. to eliminate any step up features) will result in a significant increase of the cost of the subordinated debt.	Not agreed. See response to comment 485.
494.			Confidential comment deleted	
495.	Institut des actuaires (France)	3.85.	We consider that the required conditions to classify an eligible own fund in Tier 1 are too far from the current practice of the market. Particularly the "free from requirements or incentives to redeem" item seems to be difficult to reach. Indeed, most of subordinated debt issued by insurers embedded "a step up" feature after the first callable period. If this feature is considered as an incentive to redeem that means that most of subordinated debts of insurers will be downgraded to tier 2 (depending on the definition of moderate) or tier 3 capital (with a current proposed limit of 15%!). A change of the current practice (i.e. to eliminate any step up	Not agreed. See response to comment 485.

			features) will result in a significant increase of the cost of the subordinated debt.	
496.	Investment & Life Assurance Group (ILAG)	3.85.	We believe that the subordination clause is too strong. We believe that the capital that should be allowed at tier 1 is that which would be fully available without constraint after a 1:200 stress. This would be less than the statement from CEIOPS on some capital types but would allow for hybrid capital if that capital was not reclaimable in the event of the SCR being breached.	Not agreed. See response to comment 472
497.	KPMG ELLP	3.85.	Part v refers to coupons/dividends being cancelled on breach of the SCR" after which they can only be paid in exceptional circumstances and subject to the consent of the supervisory authority". We believe further guidance is needed in respect of the extract quoted, and believe that once the SCR is restored and no further breach is foreseen, this requirements should be withdrawn, so that firms are free to recommence such payments.	Noted.
498.	Legal & General Group	3.85.	As currently drafted, Tier 1 own funds must meet the key features set out in the CP. This is more onerous than the current rules and may lead to significant restructuring of own funds across the insurance sector which would be difficult and expensive in the current market. As already stated this comment depends on the proposed definition of "new" insurance Tier 1 and whether it is meant to correspond to Bank Core Tier 1. We believe that the proposals should be softened to have regard to the key features instead of 'must have' key features.	Not agreed. If hybrids are to be included within Tier 1, then all Tier 1 instruments should demonstrate these 'must have' key features.
499.	Link4 Towarzystwo Ubezpieczeń SA	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital. Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality	See response to comment 485

			capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
500.	Lloyd's	3.85.	Sub-paragraph iv - The rationale for excluding hybrid instruments with an incentive to redeem from Tier 1 is unclear; an incentive to redeem (belonging to the issuer) does not weaken the instrument's availability to meet losses.	See response to comment 485
501.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital. Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a	See response to comment 485

			breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
502.	OAC Actuaries and Consultants	3.85.	We believe that the subordination clause is too strong. We believe that the capital that should be allowed at tier 1 is that which would be fully available without constraint after a 1:200 stress. This would be less than the statement from CEIOPS on some capital types but would allow for hybrid capital if that capital was not reclaimable in the event of the SCR being breached. i) it is unclear whether it is envisaged that more than one instrument could be deeply subordinated to the same degree. Otherwise potentially only one capital instrument could therefore rank as tier one. ii) The loss absorbency criterion seems to accept that more than one instrument could rank equally. iii) The lockin may be difficult to achieve in practice particularly for existing instruments. iv)	Not agreed. See response to comment 472.

			As for iii) question whether there may be practical difficulties.	
503.	Pearl Group Limited	3.85.	We agree with the statement that the issue date is the appropriate basis for assessing whether an instrument has sufficient duration. Although the absence of a step-up on the first call date increases the financial flexibility of the issuer and therefore the capital quality of the instrument, we do not consider that the presence of a step-up negates the capital quality of the instrument. Innovative tier 1 instruments with step ups have absorbed huge losses since the beginning of the financial crisis and have proved their capital quality. Therefore, we disagree with the proposed requirement that tier 1 instruments should not include a step-up.	Not agreed. See response to comment 485
504.	Pricewaterhouse Coopers LLP	3.85.	i) it is unclear whether it is envisaged that more than one instrument could be deeply subordinated to the same degree. Otherwise potentially only one capital instrument could therefore rank as Tier one. ii) The loss absorbency criterion seems to accept that more than one instrument could rank equally. Taking into accounts the comments on subparagraph i), explicit clarification of this point would be welcome. iii) Existing instruments may not contain this feature and grandfathering arrangements may need to be considered. iv) v) As for iii) there may be practical difficulties for existing instruments.	Not agreed. See response to comment 472. Noted. Transitional arrangements are expected. Noted
505.	RSA Insurance Group PLC	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital.	See response to comment 485

			Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
506.	RSA Insurance Ireland Ltd	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital. Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of	See response to comment 485

			Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
507.	RSA\32\45\32Sun Insurance Office Ltd.	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of the issuer, there are safeguards in place to protect the capital. Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the	See response to comment 485

			business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
508.			Confidential comment deleted	
509.			Confidential comment deleted	
510.	Solvency II Legal Group This response reflects the	3.85.	a) It would be helpful to clarify whether the key features indicated here and repeated in 3.191 are intended to form part of the list of own fund items contemplated by Article 97.1(a) of the Level 1 text, as specified in 3.190 or are intended to represent guidance as to CEIOPS' interpretation of the criteria in Article 94 which could apply to items other than those specified in the list. b) As regards ii, we were not clear what is intended to be added by "and must not hinder recapitalisation". Reading 3.87, it seems that hybrid capital instruments might need to be subject to write down at the discretion of the undertaking, and this interpretation is reinforced by the description of "other paid in capital instruments" in 3.1.90.c. b. But in that case it is not clear what additional value would be provided to investors as compared with shares. c) As regards v, it is not clear why capital that carries a fixed dividend should not be classified as tier 1, where payment of such dividend is entirely at the discretion of the undertaking. d) It is not entirely clear whether an alternative coupon settlement mechanism would be an acceptable way to overcome any problems associated with a dividend being fixed.	
511.	SWEDEN: Trygg-Hansa Försäkrings	3.85.	v Agree that there should be no incentive to redeem as detailed in 3.85, but step-ups should still be allowed – so long as supervisory authority has to give approval, and redemption is only at option of	Not agreed. See response to Comment 485.

	AB (516401-7799)		the issuer, there are safeguards in place to protect the capital. Issuers should always have the flexibility to be able to call providing the instrument is replaced with the same or better quality capital, especially if this can be raised more cheaply than the step-up. v. Providing coupons are optional and can be cancelled if there is a breach of SCR by making the payment, it should not matter whether coupons are at a fixed rate. There is no mention of Alternative Coupon Stock Settlement mechanisms by CEIOPS although these are a useful tool to allow coupons to be paid by the issuance of common equity even if these can only be paid at redemption of the instrument. v. We consider that requiring an insurer to cancel its coupon/dividend as soon as the SCR is breached needs to be carefully considered as it will make it harder to recapitalise the business if no future coupons/dividends are being paid. This may be an area where the ladder of intervention should be applied in order for the supervisor to impose varying restrictions on the firms ability to pay coupons/dividends depending on the severity of the breach.	
512.	Association of British Insurers	3.86.	The presence of hybrids does not hinder recapitalisation – in fact, a re-capitalising entity may want to issue hybrid as part of its recapitalisation package allowing it to attract a wider range of investors.	Noted.
513.	Pearl Group Limited	3.86.	The presence of hybrids does not hinder recapitalisation – in fact, a re-capitalising entity may want to issue hybrid as part of its recapitalisation package.	Noted.
514.			Confidential comment deleted	
515.	CFO	3.89.	“Excess of assets over liabilities” should be based on a market	

			consistent valuation and recognised as Tier 1 capital. "Excess of assets over liabilities" should always be based on a valuation approach that is market consistent. This treatment should be stated with a sentence added to say that a correction is required for any asset or liability that is not valued at a market consistent basis. Comments in 3.101 are also relevant here.	Not agreed. This is inconsistent with the L1 text.
516.	CRO Forum	3.89.	See our comment on §3.195	Noted.
517.	KPMG ELLP	3.89.	We understand the "excess of assets over liabilities" to mean the excess as determined on a Solvency II basis, and not the excess per the financial statements. We do not believe it is totally clear in this paper which of these options CEIOPS believes it to be.	Refer to art 74
518.	CEA, ECO-SLV-09-441	3.94.	See comment to 3.195.	Noted.
519.	ASSOCIATION OF FRIENDLY SOCIETIES	3.96.	We believe the statement on "winding up" again implies that solvency on winding up is to be tested under Solvency 2. We believe that a winding up test would not sit well in the current Solvency 2 regime and requires a completely different calculation of technical provisions and solvency capital required based on the firm being wound up in 12 months time. We believe the tier split between own funds based on the suggested increase in liabilities on a winding up basis to be deeply flawed. In particular, for mutuals, the technical provisions (if following CP39 on including discretionary benefits) on winding up must equal all of the assets less any other liabilities. This is because, by definition, the mutual insurer must distribute all excess assets to members and this becomes a discretionary benefit.	Noted. See para 3.95

			Equally, on winding up, there is no need for all of the life insurance SCR which is mostly set to reflect long term stresses in assumptions (say 50% increase or decrease in lapse rates, 10% increase in expenses and a long term increase in mortality). The operational risk SCR would also appear to be much too large if the firm is considering winding up rather than a continuing fund. There would be no need for the elements associated with reputational risk or long term errors in systems or selling. For some unit linked insurers, the majority of the SCR is made up of the difference in negative non unit reserves due to the stresses from the life underwriting module. It would seem strange and perverse to require unit linked insurers to hold an SCR based on differences in margin but then not allow the margin to be shown as the asset against this SCR. We believe this split is deeply flawed in free assets. If CEIOPS wishes there to be a test on solvency on winding up then this needs to be carried out as a completely separate exercise from the main solvency assessment on an open fund going concern basis. Technical provisions would then not make any allowance for discretionary benefits and would be set to be the minimum surrender values capable of being paid to clients. The SCR would be replaced by the one year stress only and would not allow for any long term effects of the stress. The liabilities would also include legal costs associated with winding up but no allowance for future expenses. CEIOPS should also note that it is almost impractical to wind up insurance companies (not friendly societies which have specific provisions in their governing legislation) in the UK. All policyholders are treated as unsecured creditors and need to give agreement to the winding up. Company Act legislation requires the liquidators to	

			try to run off the company first. The only method found to work is to first carry out a transfer of engagements which then returns us to the normal assessment for Solvency 2. Indeed, we believe that the normal method to wind up any insurer will be to: (a) transfer the engagements on a going concern basis to another provider. This provider will require the normal technical provisions as defined by CP39; (b) then wind up the empty shell. If this route is not followed, clients will lose valuable insurance guarantees (for example by being found uninsurable at present). This cannot be in line with a supervisor's objectives.	
520.			Confidential comment deleted	
521.	CEA, ECO-SLV-09-441	3.96.	See comment to 3.195.	Noted.
522.	CFO	3.96.	It is inappropriate to set limitations based on IFRS or local GAAP bases. Limitations should be set with reference to the market value approach underpinning Solvency II and not with reference to IFRS or local GAAP bases. Using different local accounting bases as a starting point contradicts the idea of a harmonised approach and does not create a level playing field for all financial institutions. 3.96 (a): The CP sets limitations based on equalisation reserves. These are measured at book value and based on local GAAP accounting methodologies. These are not relevant in the context of a market value approach under Solvency II and the reference	Disagreed. Solvency II cannot override the distinctions created due to national law.

			should be removed. Article 93 (1) talks about the general "availability to fully absorb losses". Solvency II has a holistic balance sheet approach, and does not allocate valuation adjustments to its sources. This principle must be applied consistently. 3.96(b): The CP sets limitations on the loss absorption capacity of the difference between the value of the technical provisions calculated in accordance with the Directive and the liability in case of winding-up with no transfer of portfolios. The winding-up with no transfer of portfolios is not consistent with a market consistent approach and is therefore not relevant here and should be removed. Solvency II requires capital calibrated to a one-year VaR approach such that after the occurrence of the shock event, the undertaking has sufficient assets to be able to transfer its liabilities to a third party. As a result, it is not clear why there would be a difference in value between winding-up and going concern. The SCR already includes the ability to transfer and therefore we believe that including a "winding-up gap" result is effectively double counting. 3.96(c): The excess of assets over liabilities includes deferred tax assets as well as deferred tax liabilities. It does not make economic sense to exclude the first while maintaining the second. Net deferred tax assets, to the extent they are recoverable, must be classified as Tier 1 capital.	
523.	CRO Forum	3.96.	See our comment on §3.195	Noted.
524.	Danish Insurance Association	3.96.	CEIOPS states that it has identified elements of the excess of assets over liabilities with restricted loss-absorption capacity, hereunder a so-called winding-up gab. A further clarification of this term "winding up gab" is needed. The definition given,	Noted. See Annex to Advice and para 3.99.

			"The difference between the value of technical provisions calculated in accordance with articles 74 to 85, that is, on a going concern basis, and the amounts that the original undertaking shall have to pay to its policyholders to honour their rights in the case of winding up and no transfer of portfolios (winding up gab)" is not sufficient for a clear interpretation seen in the light of the valuation of liabilities methods and the going concern principle of solvency II.	
525.	Danish Insurance Association	3.96.	See 524	Noted. See resolution note 524.
526.	Investment & Life Assurance Group (ILAG)	3.96.	We believe the statement on "winding up" again implies that solvency on winding up is to be tested under Solvency 2. We believe that a winding up test would not sit well in the current Solvency 2 regime and requires a completely different calculation of technical provisions and solvency capital required based on the firm being wound up in 12 months time. We believe the tier split between own funds based on the suggested increase in liabilities on a winding up basis to be deeply flawed. In particular, for mutuals, the technical provisions (if following CP39 on including discretionary benefits) on winding up must equal all of the assets less any other liabilities. This is because, by definition, the mutual insurer must distribute all excess assets to members and this becomes a discretionary benefit. Equally, on winding up, there is no need for all of the life insurance SCR which is mostly set to reflect long term stresses in assumptions (say 50% increase or decrease in lapse rates, 10% increase in expenses and a long term increase in mortality). The operational risk SCR would also appear to be much too large if the	Noted.

			firm is considering winding up rather than a continuing fund. There would be no need for the elements associated with reputational risk or long term errors in systems or selling. For some unit linked insurers, the majority of the SCR is made up of the difference in negative non unit reserves due to the stresses from the life underwriting module. It would seem strange and perverse to require unit linked insurers to hold an SCR based on differences in margin but then not allow the margin to be shown as the asset against this SCR. We believe this split is deeply flawed in free assets. If CEIOPS wishes there to be a test on solvency on winding up then this needs to be carried out as a completely separate exercise from the main solvency assessment on an open fund going concern basis. Technical provisions would then not make any allowance for discretionary benefits and would be set to be the minimum surrender values capable of being paid to clients. The SCR would be replaced by the one year stress only and would not allow for any long term effects of the stress. The liabilities would also include legal costs associated with winding up but no allowance for future expenses. CEIOPS should also note that it is almost impractical to wind up insurance companies (not friendly societies which have specific provisions in their governing legislation) in the UK. All policyholders are treated as unsecured creditors and need to give agreement to the winding up. Company Act legislation requires the liquidators to try to run off the company first. The only method found to work is to first carry out a transfer of engagements which then returns us to the normal assessment for Solvency 2. Indeed, we believe that the normal method to wind up any insurer will be to:	

			(a) transfer the engagements on a going concern basis to another provider. This provider will require the normal technical provisions as defined by CP39; (b) then wind up the empty shell. If this route is not followed, clients will lose valuable insurance guarantees (for example by being found uninsurable at present). This cannot be in line with a supervisor's objectives.	
527.	Lloyd's	3.96.	Sub-paragraph b – under Solvency II technical provisions are set on an economic basis as a going concern. The capital requirement to cover losses up to a 99.5% VaR outcome is addressed through the SCR calculation. It is clearly wrong effectively to disallow the difference between technical provisions on a run-off basis compared with those set on a going concern basis as Tier 1 assets; this would effectively require the whole of the European insurance industry to be reserving on a run-off basis which is nonsensical and would be extremely damaging to its global competitiveness. We propose that this requirement is deleted.	Noted.
528.	Munich RE	3.96.	The economic approach under Solvency II has to be applied consistently through the calculation of SCR and available own funds. It must not be mixed up with the existing laws and restrictions under national accounting which correspond to non-economic values. Article 93 (1) talks about the general "availability to fully absorb losses". Solvency II has a holistic balance sheet approach, and does not allocate valuation adjustments to its sources. This principle has to be adopted consistently otherwise the hole system will be mislead. At the same time starting from a pure accounting perspective contradicts the idea of an harmonised approach of own funds	The proposals are consistent with market consistent valuation (Art 74) and it is unclear why these comments were made. References to local GAAP are unclear, but Solvency 2 cannot override the restrictions or requirements that are created under national law.

			across Europe, does not create a level playing field and distorts competition in the Single Market. The total balance sheet approach reflects a correct economic view and should therefore be independent of national accounting or taxation rules.	
529.	OAC Actuaries and Consultants	3.96.	We believe the statement on "winding up" again implies that solvency on winding up is to be tested under Solvency 2. We believe that a winding up test would not sit well in the current Solvency 2 regime and requires a completely different calculation of technical provisions and solvency capital required based on the firm being wound up in 12 months time. We believe the tier split between own funds based on the suggested increase in liabilities on a winding up basis to be deeply flawed. In particular, for mutuals, the technical provisions (if following CP39 on including discretionary benefits) on winding up must equal all of the assets less any other liabilities. This is because, by definition, the mutual insurer must distribute all excess assets to members and this becomes a discretionary benefit. Equally, on winding up, there is no need for all of the life insurance SCR which is mostly set to reflect long term stresses in assumptions (say 50% increase or decrease in lapse rates, 10% increase in expenses and a long term increase in mortality). The operational risk SCR would also appear to be much too large if the firm is considering winding up rather than a continuing fund. There would be no need for the elements associated with reputational risk or long term errors in systems or selling. For some unit linked insurers, the majority of the SCR is made up of the difference in negative non unit reserves due to the stresses from the life underwriting module. It would seem strange and perverse to require unit linked insurers to hold an SCR based on differences in margin but then not allow the margin to be shown as the asset against this SCR.	Noted.

			We believe this split is deeply flawed in free assets. If CEIOPS wishes there to be a test on solvency on winding up then this needs to be carried out as a completely separate exercise from the main solvency assessment on an open fund going concern basis. Technical provisions would then not make any allowance for discretionary benefits and would be set to be the minimum surrender values capable of being paid to clients. The SCR would be replaced by the one year stress only and would not allow for any long term effects of the stress. The liabilities would also include legal costs associated with winding up but no allowance for future expenses. CEIOPS should also note that it is almost impractical to wind up insurance companies (not friendly societies which have specific provisions in their governing legislation) in the UK. All policyholders are treated as unsecured creditors and need to give agreement to the winding up. Company Act legislation requires the liquidators to try to run off the company first. The only method found to work is to first carry out a transfer of engagements which then returns us to the normal assessment for Solvency 2. Indeed, we believe that the normal method to wind up any insurer will be to: (a) transfer the engagements on a going concern basis to another provider. This provider will require the normal technical provisions as defined by CP39; (b) then wind up the empty shell. If this route is not followed, clients will lose valuable insurance guarantees (for example by being found uninsurable at present). This cannot be in line with a supervisor’s objectives.	

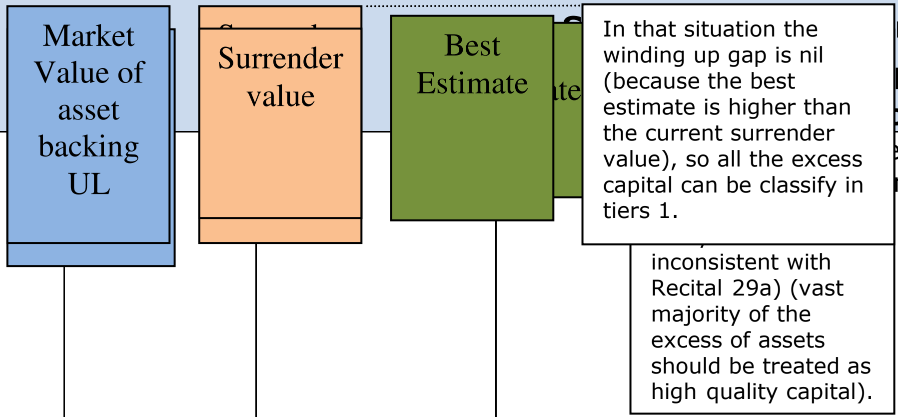
530.	Pacific Life Re	3.96.	We are concerned about the potentially wide-ranging nature of the requirement set out in sub-section (b) and the risk of it having significant unintended consequences. This sub-section requires the excess of any amount payable to policyholders to honour their rights in the case of winding up in excess of the technical provisions to be treated as Tier 3 rather Tier 1. One example requiring further consideration is standard reinsurance treaties, particularly for risk premium business. The nature of this business means that technical provisions will often be negative, particularly for business written on very profitable terms or where the experience has moved in favour of the reinsurer since the treaty commencement. The negative provisions reflect the value of future premiums in excess of future claims. Policyholders (cedants) will often have no rights in the event of a winding up – they will be required to continue paying premiums in accordance with the treaty. It would be wrong, in our view, to consider the amounts payable in the event of winding up to be zero, note that this exceeds the negative technical provisions and thereby require that the latter are treated as Tier 3 capital, which is a potential strict interpretation of the current wording . We would suggest that an explicit exception be included in the final wording stating that the clause does not apply to any business where the policyholder has no right to vary the terms of the business in the case of a winding up. There are similar examples of reinsurance business that require additional consideration. For example, treaties exist that include winding up provisions that can lead to payments from the cedant to the reinsurer in certain circumstances. This reflects the "business to business" nature of reinsurance. It should be possible to include any amounts payable to the reinsurer as part of Tier 1 in these circumstances. This could be achieved by varying the wording in	Noted.

			this section to read "….the amounts that the original undertaking shall have to pay to its policyholders, less any amounts payable from policyholders to the original undertaking, to honour their rights ……". This wording is repeated in 3.195 and the same arguments would clearly apply.	
531.			Confidential comment deleted	
532.	UNESPA (Association of Spanish Insurers)	3.96.	See 3.199	Noted.
533.	CEA, ECO-SLV-09-441	3.97.	Assets and liabilities which are not valued under a Solvency II market consistent balance sheet fall under the "excess of assets over liabilities" which by construction is Tier 1 capital. See comment to 3.195.	Noted. However, if they fail to meet the tier 1 requirements then they are not allowed to be classified as Tier 1 eligible own funds.
534.	CFO	3.97.	Comments in 3.96 are also relevant here.	Noted.
535.	German Insurance Association – Gesamtverband der D	3.97.	Under a Solvency II market consistent balance sheet the "excess of assets over liabilities" is by construction Tier 1 capital. Because of the market consistent valuation of assets and liabilities in the Solvency II balance sheet the "excess of assets over liabilities" is by construction Tier 1 capital. As the Level I text defines the excess of assets over liabilities as basic own funds, parts of it, if any, not classified as Tier 1 – in contrast to our view - would have to be classified in a lower tier – a non-recognition as own funds would be not in line with the Level I text. Classification into tier 2 or tier 3 would be based on Art. 93. As these parts are not mentioned explicitly in the advice list of items in tier 2 and tier 3 we would ask CEIOPS to align the advice with the explanatory	See response to comment 533.

			text.	
536.	CFO	3.98.	This paragraph requires updating as the current interpretation completely ignores Article 94(1) of level 1 text, where Tier 1 own fund items should "substantially" possess these characteristics. Comments in 3.96 are also relevant here.	Noted.
537.			Confidential comment deleted	
538.	CFO	3.99.	Comments in 3.96 and 3.98 are also relevant here.	Noted.
539.	AAS BALTA	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
540.	AB Lietuvos draudimas	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
541.	ASSOCIATIO N OF FRIENDLY SOCIETIES	3.100.	See our comments in 3.96 above. We believe that the "winding up gap" is not something that can be tested within a normal solvency assessment. It requires a different solvency assessment setting all items (including technical provisions for customer payouts, SCRs and expense provisions) onto the minimum required under a winding up basis. We also believe that winding up would in nearly all circumstances be completed only after a full transfer of engagements to another provider. We also question the non allowance for deferred tax assets. This would only be acceptable within a winding up solvency assessment not within a going concern assessment as in Solvency 2. Again, we believe that this statement is the result of the deeply flawed interpretation by CEIOPS of Article 93.	Noted. See para 3.99.

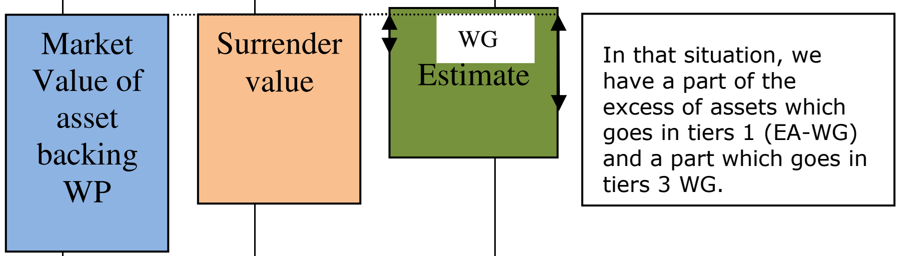
542.	CEA, ECO-SLV-09-441	3.100.	See comment to 3.195.	Noted.
543.	CFO	3.100.	The use of equalisation reserves is not relevant in an economic balance sheet. The concept of equalisation reserves in our view relates to a book value type approach (i.e. they would not exist in a market consistent approach) and therefore should not be considered here. It is inappropriate to mix economic principles and local GAAP bases. In line with our comments in 3.96, we note that the proposed reduction of basic own funds mixes economic principles and local GAAP bases. This resulting in double counting of catastrophe insurance – once through requiring holding a Catastrophe SCR and then by removing economic own funds. This does not create a level playing field for all financial institutions. The notion of winding-up gap contradicts the economic balance sheet approach. In a winding-up, the insurance company will transfer its liabilities at economic values. Therefore the winding-up gap will be nil. The notion of winding-up gap is therefore not appropriate. Net deferred tax assets must be part of Tier 1 capital. To the extent they are recoverable over time, which should not be restricted to the next 12 months, net deferred tax assets must be classified as Tier 1 capital. It should be noted that deferred tax assets can only be included in the balance sheet if both the firm and its auditors believe these deferred tax assets are recoverable. Therefore, net deferred tax assets should be recognised as having	Noted.

			loss absorbing capacity. Comments in 3.96, 3.195 and 3.197 are also relevant here.	
544.			Confidential comment deleted	
545.	CRO Forum	3.100.	See our comment on §3.195	Noted.
546.	Danish Insurance Association	3.100.	The potential size of this winding up gab needs to be investigated due to a potential reallocation from tier 1 to tier 3 due to restriction on the size of tier 3.	See para 3.99.
547.	Danish Insurance Association	3.100.	See 546	See resolution note 346.
548.	DENMARK: Codan Forsikring A/S (10529638)	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
549.	DIMA (Dublin International Insurance & Management	3.100.	Treatment of deferred tax needs further clarification. It is hard to determine which deferred tax asset will have loss absorbing capacity to be eligible as Tier 3 item.	Noted.
550.	FFSA	3.100.	b) Winding up gap: We don't understand the rationale to introduce the concept of "winding WG=Winding up gap of portfolios. This seems to be an artificial argument not compliant with the framework of the directive. Moreover this new concept, if we understand it well, would result in	See para 3.99.



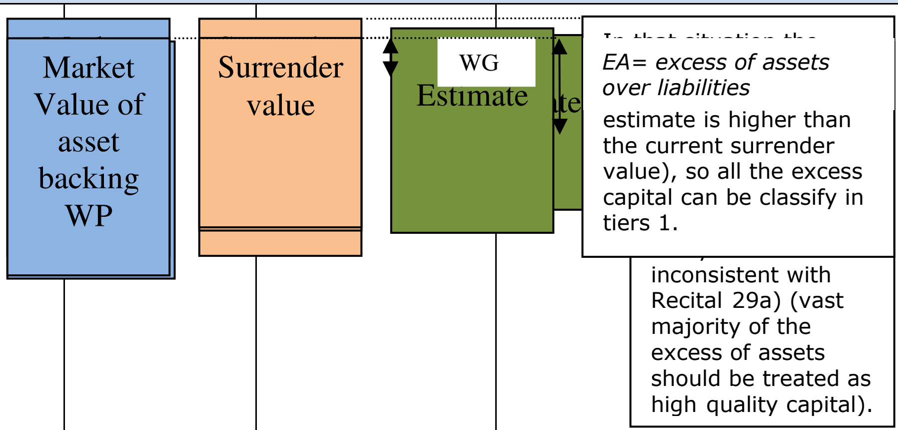
…et's take the example of unit linked …ng situation:

For with profit contracts, several situation can be observed

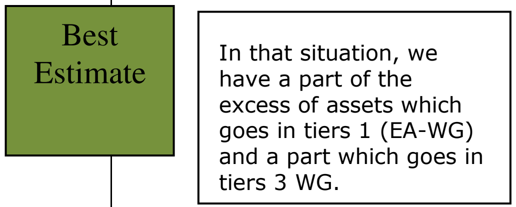


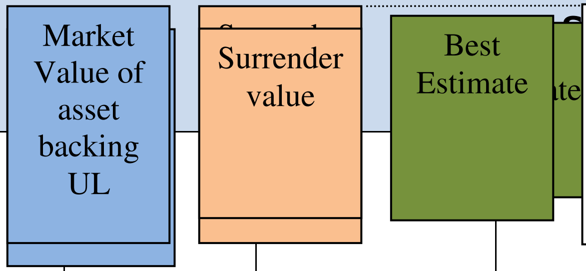
			The only differences between these 2 examples could be the level of contractual bonuses which can be higher in situation 1 (that's why the best estimate is higher). This explanation is insufficient to explain why a portion of the excess of assets should go in tiers 3 in example 2 and not in example 1. We propose to eliminate this notion of winding up gap and to come back to the principle that excess of asset over liabilities should be treated as high quality own fund except if there are any contractual or legal features which limit the economic right of the insurer	
551.	German Insurance Association – Gesamtverband der D	3.100.	23.	Noted.
552.	GROUPAMA	3.100.	Groupama questions the treatment suggested for the difference between Best Estimate and the amount to be paid in the case of winding-up. We understand this value to be the Best Estimate calculated on a run-off basis. The difference between this "run-off" Best Estimate and the central one should be classified as Tier 3. We	Noted.

			question this point: - As this amount is included in the difference between assets and liabilities, the Directive states that it is basic own funds. - It is possible that due to cost reduction, the run-off Best Estimate could be lower than the central one: it would lead to Tier 3 own funds being in the negative. - The concept of "run-off" Best Estimate is not consistent with the spirit of the Directive and a transfer value of technical provisions. - This run-off value could be very onerous to calculate, and there is no connection with the day to day management of the company. For those reasons we recommend that no reference is made to this technical provision on "winding up".	
553.	Groupe Consultatif	3.100.	General comment: we are not convinced that the approach taken by CEIOPS is consistent with the level 1 text according to which the excess of assets over liabilities, reduced only by the amount of own shares he WG=Winding up gap ered as basic own funds (Article 87) and the vast majority of this excess of assets over liabilities treated as high quality capital (Recital 29a). b) Winding up gap: We don't understand the rationale to introduce the concept of "winding up and no transfer" of portfolios. This seems to be an artificial argument not compliant with the framework of the directive. Moreover this new concept, if we understand it well, would result in significant inconsistencies. Let's take the example of unit linked contract, we have the following situation:	See para 3.99.



For with profit contracts, several situation can be observed

			 The only differences between these 2 examples could be the level of contractual bonuses which can be higher in situation 1 (that's why the best estimate is higher). This explanation is insufficient to explain why a portion of the excess of assets should go in tiers 3 in example 2 and not in example 1. We propose to eliminate this notion of winding up gap and to come back to the principle that excess of asset over liabilities should be treated as high quality own fund except if there are any contractual or legal features which limit the economic right of the insurer (ring fenced fund for instance)	
554.	Institut des actuaires (France)	3.100.	General comment: we are not convinced that the approach taken by CEIOPS is consistent with the level 1 text according to which the excess of assets over liabilities, reduced only by the amount of own shares he WG=Winding up gap ered as basic own funds (Article 87) and the vast majority of this excess of assets over liabilities treated as high quality capital (Recital 29a). b) Winding up gap: We don't understand the rationale to introduce the concept of "winding up and no transfer" of portfolios. This seems to be an artificial argument not compliant with the framework of the directive. Moreover this new concept, if we understand it well, would result in	See para 3.99.

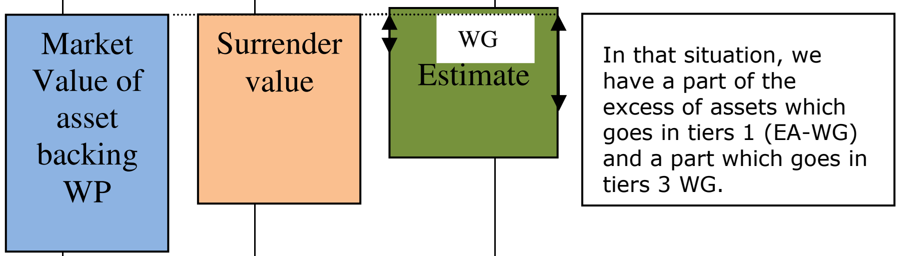


t's take the example of unit linked
ng situation:

In that situation the winding up gap is nil (because the best estimate is higher than the current surrender value), so all the excess capital can be classify in tiers 1.

inconsistent with Recital 29a) (vast majority of the excess of assets should be treated as high quality capital).

For with profit contracts, several situation can be observed

			 The only differences between these 2 examples could be the level of contractual bonuses which can be higher in situation 1 (that's why the best estimate is higher). This explanation is insufficient to explain why a portion of the excess of assets should go in tiers 3 in example 2 and not in example 1. We propose to eliminate this notion of winding up gap and to come back to the principle that excess of asset over liabilities should be treated as high quality own fund except if there are any contractual or legal features which limit the economic right of the insurer (ring fenced fund for instance)	
555.	Investment & Life Assurance Group (ILAG)	3.100.	See our comments in 3.96 above. We believe that the "winding up gap" is not something that can be tested within a normal solvency assessment. It requires a different solvency assessment setting all items (including technical provisions for customer payouts, SCRs and expense provisions) onto the minimum required under a winding up basis. We also believe that winding up would in nearly all circumstances be completed only after a full transfer of engagements to another provider.	See para 3.99.

			We also question the non allowance for deferred tax assets. This would only be acceptable within a winding up solvency assessment not within a going concern assessment as in Solvency 2. Again, we believe that this statement is the result of the deeply flawed interpretation by CEIOPS of Article 93.	
556.	KPMG ELLP	3.100.	(a) We support the additional granularity of analysis applied to determining what elements of the excess of assets over liabilities constitute Tier 1 Own Funds and believe that it is important that this analysis is undertaken to maintain the integrity of the classification criteria set out in the CP. (b) For some insurers, this additional analysis may require significant work, especially where these provisions apply on a Group basis and there are several jurisdictions in which the Group operates. (c) Regarding deferred tax, this is primarily and accounting concept and as stated in CP 35, this should only be included for regulatory purposes when linked to specific, identifiable assts or liabilities that are themselves recognised within the Solvency II balance sheet. CEIOPS's tentative view was that unused tax losses/credits should be valued at nil. The loss-absorbing capacity of deferred taxes needs to follow this approach. (d) It is not clear that the difference between the valuation of technical provisions on a Solvency II basis and a break up basis ('winding up gap') should be treated as a separate capital item. However, if it is, we agree with tier 3 classification. Our concern is that this is similar to the accounting Liability Adequacy Test (LAT). An alternative approach could therefore be to make allowance for this in the determination of technical provisions, rather than including it as a specific capital item.	

557.	Link4 Towarzystwo Ubezpieczeń SA	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
558.	Lloyd's	3.100.	See comment to 3.96.	Noted.
559.	Munich RE	3.100.	a) reserves, the use of which is restricted The assumption that equalisation reserves are restricted in use is not correct when discussing solvency issues. As a rule, equalisation reserves will be used up before an entity will enter into insolvency. Their use for this purpose is possible as they do not constitute a liability to third parties. This way they are going to be used also in going concern: namely to prevent insolvency. This mechanism makes them loss absorbent to any risk of the company. Equalisation reserves serve the stabilization of the industry. Years of low combined ratios will result in high equalisation reserves and thus will disadvantage companies from countries that know the mechanism of equalisation reserves against those that don't. That means Solvency II would make equalization reserves a bad thing. Finally the new economic approach leads to a three times higher SCR in average for German P&C-insurers as QIS4 results showed. A relevant part of this increase is due to an economic view on Cat-risks which is not the case under existing static Solvency I rules. As a consequence the total amount of the excess of assets over liabilities of an economic balance sheet in Solvency II is available capital to cover the SCR in an economic valuation approach. Also equalisation reserves are partly accounted for in the market consistent value of technical liabilities (on expected value basis plus MVRM).	

			The proposed reduction of basic own funds amounting to the volume of local GAAP based reserves (valuation differences) mixes economic concepts and national legislation. At the same time it punishes catastrophe insurance twice: once through requiring Cat-SCR, twice by taking away economic own funds. However, we note that the way equalisation reserves are recognised differs from country to country. We think that the issue is too complex to be considered globally. We therefore advise to leave it to Level III to decide which kind of reserves should be excluded from Tier 1. National supervisors shall decide on the basis of national legislation. b) winding-up gap The notion of winding-up gap is new and not appropriate. It contradicts the economic balance sheet approach. In a winding up the insurance company will resolve or transfer its liabilities at economic values, the so called winding- up gap will be nil. c) Deferred tax assets Only net deferred tax assets (deferred tax assets – deferred tax liabilities > nil) can be questioned to be available in a winding up. Deferred tax assets which can be set off by deferred tax liabilities must be part of Tier 1 capital. Net deferred tax assets have to be classified at Tier 1 to the extent that they are recoverable.	
560.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.

561.	OAC Actuaries and Consultants	3.100.	See our comments in 3.96 above. We believe that the "winding up gap" is not something that can be tested within a normal solvency assessment. It requires a different solvency assessment setting all items (including technical provisions for customer payouts, SCRs and expense provisions) onto the minimum required under a winding up basis. We also believe that winding up would in nearly all circumstances be completed only after a full transfer of engagements to another provider. We also question the non allowance for deferred tax assets. This would only be acceptable within a winding up solvency assessment not within a going concern assessment as in Solvency 2. Again, we believe that this statement is the result of the deeply flawed interpretation by CEIOPS of Article 93.	See para 3.99.
562.	PricewaterhouseCoopers LLP	3.100.	a) It is unclear how such reserves would be measured and guidance on this should be provided. b) Given Article 94(3) it is unclear what the basis within the directive for excluding deferred tax assets in their totality from own funds. The approach of including assets which do not possess the characteristics of Tiers 1 or 2 within Tier 3 would appear more consistent with the Level 1 text. c) Given Article 94(3) it is unclear what the basis within the directive for excluding intangible assets in their totality from own funds. The approach of including assets which do not possess the characteristics of Tiers 1 or 2 within Tier 3 would appear more consistent with the Level 1 text (although in practice given the proposals in CP35 will largely preclude the valuing of intangible assets this distinction is unlikely to be of great practical relevance).	Noted.
563.	RBSI	3.100.	If deferred tax is of sufficient quality to be included as an asset in	Noted.

			the balance sheet we believe it should be eligible for inclusion as capital.	
564.	ROAM –	3.100.	b) Winding up gap: We don't understand the rationale to introduce the concept of "winding up and no transfer" of portfolios. This seems to be an artificial argument not compliant with the framework directive. We propose to eliminate this notion of winding up gap and to come back to the principle that excess of asset over liabilities should be treated as high quality own fund except if there are any contractual or legal features which limit the economic right of the insurer (ring fenced fund for instance) NB: what if Best estimate is superior to Market value?	Noted. See para 3.99.
565.	RSA Insurance Group PLC	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
566.	RSA Insurance Ireland Ltd	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
567.	RSA\32\45\32Sun Insurance Office Ltd.	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
568.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.100.	c) We agree with the first bullet point, i.e. that deferred taxes do not absorb losses in a stressed scenario and hence should be excluded from own funds.	Noted.
569.	UNESPA	3.100.	See 3.199	Noted.

	(Association of Spanish Insurers)			
570.	ASSOCIATION OF FRIENDLY SOCIETIES	3.101.	We believe that profit at inception is inevitable for some contracts as a result of the basic methodology of Solvency 2 of best estimate plus risk margins. We question the difference between profit at outset and the negative reserves required on some contracts some way down the line.	The issue of profits at inception will be dealt with in more detail in the final advice as some members question its inclusion in eligible own funds.
571.	CEA, ECO-SLV-09-441	3.101.	See comment to 3.195. Solvency II does not require to explicitly measure and disclose profit at inceptions. Assets and liabilities which are not valued under a Solvency II market consistent balance sheet fall under the "excess of assets over liabilities" which by construction is Tier 1 capital.	Noted. See response to comment 570
572.	CFO	3.101.	Profit at inception should be included in basic own funds. We believe that profit at inception is available capital for regulatory solvency purposes as it goes beyond the economic value of the liabilities and will not be paid to policyholders. It should therefore be classified as Tier 1 capital consistent with any other assets that are in excess of economic liabilities.	Noted. See response to comment 570
573.			Confidential comment deleted	
574.	CRO Forum	3.101.	Comments on § 3.101 and 3.102. The valuation of technical provisions as defined in Solvency II allows by definition a profit at inception (VIF), i.e. any profit at inception arising from premiums charged higher than the market consistent value of the liability result in a profit that is allocated to surplus. This would also become apparent when applying a market	Noted. See response to comment 570

			value balance sheet approach. The paragraph apparently refers to discussions to use the IFRS basis value of the liabilities also for solvency purposes. We suggest clarifying the wordings in these paragraphs to avoid misconception.	
575.	Danish Insurance Association	3.101.	It is an essential feature of the design of the liability calculation in Solvency that liabilities are measured separately from the measurement of assets. In the early negotiations on the measurement model the percentile and the cost-of-capital approach were discussed and the latter was chosen. Since liabilities are valued independently from the assets, a profit or a deficit may arise at inception. This was clearly recognised during the negotiations and not seen as a problem. Furthermore, it was recognised and accepted at that time that any profit or deficit at inception would and should impact directly on the amount of available capital. We see no reason to depart from this starting point.	Noted. See response to comment 570
576.	Danish Insurance Association	3.101.	See 575	Noted. See response to comment 570
577.	FFSA	3.101.	CEIOPS has not concluded on the treatment of profit at inception in own funds, in particular, whether all profit at inception should be included in the excess of assets over liabilities. CEIOPS is also waiting for IASB deliberations. FFSA considers these profits at inception should be included in tier 1 eligible own funds, as they correspond to an economic value, which is the basis for Solvency II. AS such, FFSA recommends to include this treatment in the CP – level 2 application guidance.	Noted. See response to comment 570
578.	German Insurance	3.101.	24.	Noted. See response to comment 570

	Association – Gesamtverband der D		25.	
579.	Groupe Consultatif	3.101.	The notion of profit at inception is irrelevant in the solvency II context. The only question the undertaking should deal with is the existence or not of an excess of asset over liabilities whatever the issue date of a contract.	Noted. See response to comment 570
580.	Institut des actuaires (France)	3.101.	The notion of profit at inception is irrelevant in the solvency II context. The only question the undertaking should deal with is the existence or not of an excess of asset over liabilities whatever the issue date of a contract.	Noted. See response to comment 570
581.	Investment & Life Assurance Group (ILAG)	3.101.	We believe that profit at inception is inevitable for some contracts as a result of the basic methodology of Solvency 2 of best estimate plus risk margins. We question the difference between profit at outset and the negative reserves required on some contracts some way down the line.	Noted. See response to comment 570
582.	KPMG ELLP	3.101.	We note that the debate over profit at inception (or 'day one profits') has moved on as part of the IASB's Phase II work and it now seems unlikely that such profits will be recognised for accounting purposes. T We therefore do not believe that this will be an asset that requires consideration. In any case, the valuation of technical provisions under Solvency II will allow for an element of profit at inception through the mechanics of the calculation.	Noted. See response to comment 570
583.	Munich RE	3.101.	The decision regarding valuation of technical provisions should be accepted here and not put to discussion again. Again: the economic balance-sheet approach has to be respected.	Noted. See response to comment 570
584.	OAC Actuaries	3.101.	We believe that profit at inception is inevitable for some contracts as a result of the basic methodology of Solvency 2 of best estimate	Noted. See response to comment 570

	and Consultants		plus risk margins. We question the difference between profit at outset and the negative reserves required on some contracts some way down the line.	
585.	RBSI	3.101.	The question of profit at inception is raised and whether this should be included in the excess of assets over liabilities and if so what tier. We believe that profit at inception is justified but also that it is important that the treatment finally adopted is in line with IFRS to avoid anomalies. If it is finally concluded that it is appropriate to include profit at inception (or some variation of this) the profit will form part of the retained earnings and should be included as part of the tier 1 capital. If, on the other hand it is not deemed to be appropriate to recognise it for accounting purposes, it will not form part of the net assets in the accounts and should not be recognised for regulatory capital purposes.	Noted. See response to comment 570
586.	AMICE	3.102.	AMICE suggests waiting for IASB developments on the topic. AMICE members believe that profit at inception should be taken into account as a part of eligible own funds and should be classified as Tier 1 to the extent that it belongs to surplus assets over liabilities.	Noted. See response to comment 570
587.	ASSOCIATIO N OF FRIENDLY SOCIETIES	3.102.	We would suggest that IASB may come up with rules that are not sensible for a supervisor assessing solvency on a going concern basis. CEIOPS should consider its own rules.	Noted. See response to comment 570
588.			Confidential comment deleted	
589.	CEA, ECO-SLV-09-441	3.102.	See comment to 3.101.	Noted. See response to comment 570
590.	CFO	3.102.	This paragraph refers to discussions around using local GAAP for	Noted. See response to comment

			solvency purposes. We reiterate that this is not appropriate (see comments in 3.96) and recommend that this paragraph is reworded to improve clarity.	570
591.	Danish Insurance Association	3.102.	It is true that the issue of profit at inception has played an important role in the IASB considerations on an accounting standard for insurance contracts. However, the issue attracted much too much attention compared to its importance. It is also true that a forthcoming IASB accounting standard for insurance contracts may create a situation where features of the Solvency II regime may need to be reconsidered. But there is no reason to reflect possible IASB decisions that have not yet been made. A new accounting standard could be a reality only in quite many years.	Noted. See response to comment 570
592.	Danish Insurance Association	3.102.	See 591	Noted. See response to comment 570
593.	European Union member firms of Deloitte Touche To	3.102.	Expected future profit on insurance contracts Paragraph 3.102 requests views on the treatment of expected future profit on insurance contracts, noting that this issue is under consideration by the IASB. We note that the IASB has not yet determined whether separate risk and residual margins or a composite margin will be included in the accounting model; nor has it yet determined a basis for earning such margins. We note that the accounting risk margin may be determined on a different basis to the Solvency II risk margin and that Solvency II does not require residual or composite margins. The overriding principle of the directive is that the insurance liabilities should be calculated on a transfer value basis; therefore we suggest that any positive or negative difference between the accounting and	Noted. See response to comment 570

			Solvency II liabilities should be included as an adjustment within Tier 1 eligible own funds.	
594.	German Insurance Association – Gesamtverband der D	3.102.	26.	
595.	Investment & Life Assurance Group (ILAG)	3.102.	We would suggest that IASB may come up with rules that are not sensible for a supervisor assessing solvency on a going concern basis. CEIOPS should consider its own rules.	Noted. See response to comment 570
596.	OAC Actuaries and Consultants	3.102.	We would suggest that IASB may come up with rules that are not sensible for a supervisor assessing solvency on a going concern basis. CEIOPS should consider its own rules.	Noted. See response to comment 570
597.	PricewaterhouseCoopers LLP	3.102.	The tentative conclusion of the IASB is to preclude the recognition of a profit on inception for accounting purposes. It would be helpful for CEIOPS to articulate its position from a solvency perspective on the assumption that the IASB maintains this stance for accounting purposes.	Noted. See response to comment 570
598.	Groupe Consultatif	3.106.	We believe that there is no substantial difference between Tier 1 and Tier 2 capital. The difference between loss absorbency in a winding up situation only and loss absorbency in a “going concern” situation seems very difficult to establish.	Noted.
599.	Institut des actuaires (France)	3.106.	We believe that there is no substantial difference between tiers 1 and tiers 2 capital. The difference between loss absorbency in a winding up situation only and loss absorbency in a “going concern”	Noted.

			situation seems very difficult to establish.	
600.			Confidential comment deleted	
601.	OAC Actuaries and Consultants	3.112.	Would such repayments require prior supervisory approval? Or is it that they would not be prevented provided the SCR is not breached? There may be practical difficulties encountered in preventing repayment if due.	Prior supervisory approval may be required if the supervisors believe that there may be a breach of the SCR in the next 12 months.
602.	PricewaterhouseCoopers LLP	3.112.	Would such repayments require prior supervisory approval? Or is it that they would not be prevented provided the SCR is not breached?	See response to comment 601.
603.	AAS BALTA	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
604.	AB Lietuvos draudimas	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
605.	CFO	3.113.	Comments in 3.85(v) are also relevant here.	Noted
606.	DENMARK: Codan Forsikring A/S (10529638)	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
607.	KPMG ELLP	3.113.	We agree with the recommendation to defer coupon payments in the event of a breach of the SCR.	Noted and agreed.
608.	Link4 Towarzystwo Ubezpieczeń SA	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
609.	Lloyd’s	3.113.	We propose that any automatic payment deferral should be	Not agreed. Breach of MCR

			triggered by a breach of MCR, not SCR, as the minimum solvency level. The requirement for the SCR to act as the trigger point would make the issue of such debt very unattractive to potential investors and thus very expensive for issuers.	triggers ultimate supervisory action, whereas breach of SCR allows for ladder of intervention to take place.
610.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
611.	RSA Insurance Group PLC	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
612.	RSA Insurance Ireland Ltd	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
613.	RSA\32\45\32Sun Insurance Office Ltd.	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
614.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.113.	Please see response to 3.85 re deferral of coupon payments.	Noted
615.	CFO	3.114.	The CFO Forum views subordination to be relevant in liquidation only (see also CEIOPS' own statement in CP 46 paragraph 3.119). While we are opposed to the line of argumentation, we do concur with the conclusion that Tier 2 and Tier 3 ((and Tier 1) shall be pari	Noted

			passu ranking.	
616.	Association of British Insurers	3.115.	See comments under 3.191	Noted
617.	CFO	3.115.	Comments in 3.85(vi) are also relevant here.	Noted
618.	CRO Forum	3.115.	See our comment on §3.201	Noted
619.	Groupe Consultatif	3.115.	Care should be taken that the required conditions to classify an eligible own fund in Tier 2 are not too far from the current practice of the market. Particularly the "moderate incentives to redeem" item must not be too difficult to reach. Indeed, most of subordinated debt issued by insurers embedded "a step up" feature after the first callable period. If this feature is not considered as a moderate incentive to redeem that means that most of subordinated debts of insurers will be downgraded to Tier 3 capital (with a current proposed limit of 15%!). A change of the current practice (i.e. to moderate any step up features) will result in a significant increase of the cost of the subordinated debt.	Noted
620.	Institut des actuaires (France)	3.115.	Care should be taken that the required conditions to classify an eligible own fund in Tier 2 are not too far from the current practice of the market. Particularly the "moderate incentives to redeem" item must not be too difficult to reach. Indeed, most of subordinated debt issued by insurers embedded "a step up" feature after the first callable period. If this feature is not considered as a moderate incentive to redeem that means that most of subordinated debts of insurers will be downgraded to Tier 3 capital (with a current proposed limit of 15%!). A change of the current practice (i.e. to moderate any step up features) will result in a significant increase of the cost of the	Noted

			subordinated debt.	
621.	OAC Actuaries and Consultants	3.115.	Ix contractual lock in may prove difficult in practice. Xi again there may be difficulties in placing such restrictions in contracts	Noted
622.	PricewaterhouseCoopers LLP	3.115.	ix Existing instruments may not contain this lock in feature and grandfathering arrangements may need to be considered. Requiring consent of the supervisory authority would result in uncertainty for providers of funds. xi see comments under ix above.	Noted
623.			Confidential comment deleted	
624.	Solvency II Legal Group This response reflects the	3.115.	a) We had the same question as at 3.85 a) above concerning the scope of these features. b) as regards viii) we were also uncertain as to whether, when the paper says that the item must absorb losses to some degree, that means only that the undertaking must be able to defer coupon payments once the SCR has been breached.	Noted
625.			Confidential comment deleted	
626.	DIMA (Dublin International Insurance & Management	3.117.	For captives, Tier 3 requirements as currently stated in Article 94 should be allowed.	See response to comment 625
627.	PricewaterhouseCoopers LLP	3.117.	Article 94 requires that "Any basic and ancillary own fund items which do not fall under paragraphs 1 and 2 shall be classified in Tier 3." This article imposes no further requirements on Tier 3 own funds and makes no reference to the requirements of Article 93 in this regard. To read the absence of a reference to another Article as	See response to comment 625

			an indication that the Article not referred to should not be "disregarded" would appear to be imputing a meaning to the text which is not actually present.	
628.			Confidential comment deleted	
629.			Confidential comment deleted	
630.	PricewaterhouseCoopers LLP	3.119.	Any element of the excess of assets over liabilities that does not fall within Tier 1 or Tier 2 would fall within Tier 3 by virtue of Article 94(3) without any reference to subordination. The statement in this paragraph does not therefore appear correct in respect of such elements.	See response to comment 625
631.	OAC Actuaries and Consultants	3.121.	There may be difficulties in placing such restrictions in contracts	See response to comment 625
632.	PricewaterhouseCoopers LLP	3.121.	There may be difficulties in placing such restrictions in contracts	See response to comment 625
633.	CFO	3.123.	Comments in 3.85(v) are also relevant here.	See response to comment 625
634.	KPMG ELLP	3.123.	As explained in 3.85, we believe the wording of the final sentence that "all cash flows on own fund items (i.e. both coupon and principal payments) should be subject to supervisory approval once the Solvency Capital Requirement is breached" should be modified to make it clear that this is only while the breach exists or is foreseen and that once coverage of the SCR is successfully restored (for example by the injection of new capital or de-risking) then supervisory approval should no longer be required.	See response to comment 625
635.			Confidential comment deleted	
636.	KPMG ELLP	3.131.	We believe that this is clear articulation of the relationship between	See response to comment 625

			basic and ancillary own funds.	
637.	CEA, ECO-SLV-09-441	3.132.	Accepting the funding model of mutuals (comment covers 3.132 – 3.140). In earlier comments we argued already in favour of accepting the funding model of mutuals. We would like to remind Ceiops that mutuals' refinancing cannot be based on capital markets as in the case of stock holding companies. Supplementary member calls are a primarily way of financing mutuals in crisis situations with a long tradition and somehow the heart of insurance. Setting criteria for ancillary own funds that are too strict could affect the level playing field between mutuals and other insurers. It should not be in the interest of Ceiops to force legal forms of insurance companies away from mutuals. Therefore Ceiops should give advice on implementing measure in that respect very carefully and should closely monitor negative effects on mutuals, e. g. also indirectly by extensive public disclosure requirements.	Not agreed. Tier 1 must consist of the highest quality capital, and CEIOPS is of the view that setting criteria for AOFs will avoid requiring an overhaul of the financing structure of mutual and mutual type undertakings.
638.	German Insurance Association – Gesamtverband der D	3.132.	Accepting the funding model of mutuals (comment covers 3.132 – 3.140) In earlier comments we argued already in favour of accepting the funding model of mutuals. We would like to remind CEIOPS that mutuals' refinancing cannot be based on capital markets as in the case of stock holding companies. Supplementary member calls are a primarily way of financing mutuals with a long tradition and somehow the heart of insurance. Supplementary member calls can not only be called when sustaining losses, but they can be also called for other reasons. Setting criteria for ancillary own funds that are too strict could affect the level playing field between mutuals and other insurers. It should not be in the interest of CEIOPS to force legal forms of	Not agreed. See response to comment 637.

			insurance companies away from mutuals. Therefore CEIOPS should give advice on implementing measure in that respect very carefully and should closely monitor negative effects on mutuals, e. g. also indirectly by extensive public disclosure requirements.	
639.	AMICE	3.134.	AMICE members reject the idea that supplementary calls can only be called when sustaining losses (when in fact they can be called for other reasons). This has a bearing on obligations to disclose calls. This would thus render the effort to raise funds very difficult. We therefore suggest the following rewording suggestion: Supplementary member calls are claims that a mutual or mutual-type undertaking with variable contributions has on its ~~members to provide consideration when it sustain losses~~ to provide cash to replenish own funds	Not agreed.
640.	CEA, ECO-SLV-09-441	3.134.	We support the analysis that called-in supplementary member calls will be classified as tier 1 capital. Therefore, supplementary member calls have to be classified in tier 2.	Noted and agreed.
641.	German Insurance Association – Gesamtverband der D	3.134.	We support the analysis that called-in supplementary member calls will be classified as tier 1 capital. Therefore, supplementary member calls have to be classified in tier 2.	Noted and agreed.
642.	ROAM –	3.134.	ROAM members reject the idea that supplementary calls can only be called when sustaining losses (can be called for other reasons). Such reasoning has a bearing in the context of the (potential) obligations to disclose calls. This as such would then render the effort to raise funds very difficult. We therefore suggest the following rewording suggestion: Supplementary member calls are claims that a mutual or mutual-	Not agreed. See response to comment 637.

			type undertaking with variable contributions has on its members to provide consideration when it sustain losses to provide cash to replenish own funds	
643.	AMICE	3.135.	AMICE members agree with the wording of this paragraph – we understand "on demand" as "immediately and unconditionally", eg. as not depending of a preceding resolution of the general meeting etc.	Noted.
644.	ASSOCIATION OF FRIENDLY SOCIETIES	3.135.	We would agree that member's calls should be tier 2 and tier 3	Noted and agreed.
645.	FFSA	3.135.	We agree with CEIOPS	Noted and agreed.
646.	Investment & Life Assurance Group (ILAG)	3.135.	We would agree that member's calls should be tier 2 and tier 3.	Noted and agreed.
647.	OAC Actuaries and Consultants	3.135.	We would agree that member's calls should be tier 2 and tier 3	Noted and agreed.
648.	ROAM –	3.135.	ROAM members agree with the wording of this paragraph – we understand "on demand" as "immediately and unconditionally", eg as not depending of a preceding resolution of the general meeting etc.	Noted.
649.	AMICE	3.138.	The split 40:60 is a compromise and AMICE members argue that all (= 100%) of the supplementary calls' facility within the next twelve months should be classified as Tier 2, if the criteria for inclusion of ancillary own funds in Tier 2 are fulfilled.	Not agreed. There must be basic own funds that form part of Tier 2.

			Supplementary calls within the next 12 months which do not fulfill the criteria to be considered as Tier 2 together with supplementary calls beyond 12 months should be classified as Tier 3, if the criteria for inclusion of ancillary own funds in Tier 3 are fulfilled. We note that 2007 CEIOPS survey on eligible elements of capital confirmed earlier AISAM-ACME positions on this topic in particular that "unbudgeted" supplementary calls are an essential and fundamental if not exceptional concept for mutual insurers. AISAM-ACME letter also indicated that the amounts received reflect a limited credit risk (1%) and suggested the need for a high acceptance ratio (98-99%) of the potential to call as tier 1 eligible elements of capital. This is also in line with the probability of default which suggests a default of 1% of gross premium debited, which could be potentially higher (and 2% would imply a doubling) (excerpts from letter AISAM-ACME to CEIOPS 24/10/2007).	
650.	CEA, ECO-SLV-09-441	3.138.	Any split by a fixed percentage would be arbitrary and not in line with Level I text. Economically the loss-absorbency has to be assessed. If the criteria for inclusion of ancillary own funds in tier 2 are fulfilled, supplementary member calls have to be classified fully in tier 2. In general, we are against splitting capital instruments in different tiers.	Not agreed. See response to comment 649.
651.	FFSA	3.138.	We agree with CEIOPS	Noted and agreed.
652.	German Insurance Association – Gesamtverband der D	3.138.	Any split by a fixed percentage would be arbitrary and not in line with Level I text. Economically the loss-absorbency has to be assessed. If the criteria for inclusion of ancillary own funds in tier 2 are fulfilled, supplementary member calls have to be classified fully in tier 2. In general, we are against splitting capital instruments in different tiers.	Not agreed. See response to comment 649.
653.	ROAM –	3.138.	ROAM members argue that in line with the Level 1 text all (=	Not agreed. See response to

			100%) of the supplementary call facility within the next twelve months should be classified as Tier 2 if the criteria for inclusion of ancillary own funds in Tier 2 are fulfilled.. Supplementary calls within the next 12 months which do not fulfilled the criteria to be considered as Tier 2 together with Supplementary calls beyond 12 months should be classified as Tier 3 if the criteria for inclusion of ancillary own funds in Tier 3 are fulfilled. Concerning the 40:60 split, we would like to refer to the 2007 CEIOPS survey on eligible elements of capital which confirmed earlier AISAM-ACME positions on this topic in particular that 'unbudgeted' supplementary calls are an essential and fundamental if exceptional concept for mutual insurers. The survey referred to amounts received which reflected a limited credit risk (1%) and it suggested the need for a high acceptance ratio (98-99%) of the potential to call as tier 1 eligible elements of capital. (Even a doubling of the default risk to 2% is very remote from a 60/40 split - see also letter AISAM-ACME to CEIOPS 24/10/2007)	comment 649.
654.	OAC Actuaries and Consultants	3.139.	This appears to allow all of the supplementary member calls to be capable of being treated as tier 2 subject to limits. If this interpretation is correct a little more clarification would be helpful.	Agreed, clarification will be provided.
655.	Pricewaterho useCoopers LLP	3.139.	This appears to allow all of the supplementary member calls to be capable of being treated as Tier 2 subject to limits. If this interpretation is correct a little more clarification would be helpful.	Agreed, clarification will be provided.
656.	AAS BALTA	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.
657.	AB Lietuvos draudimas	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.

658.	DENMARK: Codan Forsikring A/S (10529638)	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.
659.	KPMG ELLP	3.145.	As noted above, we support a principles based approach to supervisory approval although we also support the drafting of a list of capital instruments' allocation to the relevant Tiers as guidance	Noted.
660.	Link4 Towarzystwo Ubezpieczeń SA	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.
661.	Lloyd's	3.145.	We fully support the proposal that the approach to the approval of ancillary own funds should be principle-based.	Noted and agreed.
662.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.
663.	RSA Insurance Group PLC	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.
664.	RSA Insurance Ireland Ltd	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.
665.	RSA\32\45\	3.145.	We agree with CEIOPS recommendation that mechanistic approach	Noted and agreed.

	32Sun Insurance Office Ltd.		be avoided to the extent possible.	
666.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.145.	We agree with CEIOPS recommendation that mechanistic approach be avoided to the extent possible.	Noted and agreed.
667.	KPMG ELLP	3.146.	Providing room for elaboration is also critical to deal with the emergence of new types of capital instruments in the future.	Noted and agreed.
668.	OAC Actuaries and Consultants	3.146.	It would be preferable to ensure that the level 2 implementing measures are sufficiently detailed to avoid the need for level 3 supervisory guidance.	Noted.
669.	PricewaterhouseCoopers LLP	3.146.	It would be preferable to ensure that the level 2 implementing measures are sufficiently detailed to avoid the need for level 3 supervisory guidance.	Noted
670.	OAC Actuaries and Consultants	3.147.	This may lead to delays in raising new capital when urgently required.	Noted
671.	Munich RE	3.151.	Industry's comments on approval of ancillary own funds paper have not been taken on board.	Noted
672.	KPMG ELLP	3.152.	The supervisory approval process appears sensible. We also support the comment that this is the approach that insurers should be adopting internally to categorise capital instruments as Own Funds	Noted and agreed.
673.	Lloyd's	3.155.	We agree that approval should be a one-off process with approval	Noted.

			given until legal maturity, and regard this as a step forward from the annual approval requirement in this context set out in CP29.	
674.	KPMG ELLP	3.156.	We agree that if there is a significant change in the characteristics or features of a capital instrument, a supervisory re-assessment should be required. However, it would be helpful to clarify that this would not be required if this resulted from an automatic conversion clause that the supervisory authority was already aware of that is triggered through a breach of the SCR coverage.	Noted and agreed. This clarification will be made.
675.	Association of British Insurers	3.158.	See comments under 3.42	Noted.
676.	CFO	3.158.	We recommend CEIOPS to address the issue of cross sector consistency as a matter of urgency. We agree with the observations of CEIOPS regarding inconsistency. However, we note that is it is important to achieve as much harmonisation between financial institutions as possible, in particular those working in the insurance and related business. In that respect we note that there are important differences between the regulatory regimes for insurance business and pension fund business. We recommend that CEIOPS address these differences as a matter of urgency.	Noted.
677.			Confidential comment deleted	
678.	KPMG ELLP	3.158.	We agree that cross-sectoral divergence on the use and categorisation of capital instruments should be minimised where possible, subject to differences in underlying directives. However, we recognise that where there are unique factors to one sector, such as the unknown duration of insurance liabilities, there can be additional matters that need to be considered in arriving at the appropriate categorisation.	Noted.

679.			Confidential comment deleted	
680.	CRO Forum	3.162.	From current practice it is not clear how such consistency will be achieved and whether treatment allowed under local regulatory rules or Group rules would be applied.	Noted.
681.			Confidential comment deleted	
682.	AMICE	3.164.	AMICE members welcome the introduction of this paragraph in CEIOPS paper.	Noted.
683.	OAC Actuaries and Consultants	3.164.	Although consistency in some areas between insurers and banks may be desirable, this does not necessarily apply to all areas.	Noted.
684.	FFSA	3.166.		
685.	Munich RE	3.166.	I	
686.	OAC Actuaries and Consultants	3.166.	This seems a sensible approach.	Noted.
687.	PricewaterhouseCoopers LLP	3.166.	This seems a sensible approach.	Noted.
688.	ROAM –	3.166.		
689.	Association of British Insurers	3.167.	This provision is not in line with the Level 1 text article 94 (a) Art 94 of the Framework Directive requires Tier 1 to substantially	Not agreed. Tier 1 needs to be of the highest quality in order to meet the ability for the firm to

			possess the characteristics of full loss absorption. Furthermore, the Framework Directive refers to Tier 1 as "high quality capital" Redraft: "Tier 1 should ~~be the highest quality~~ consist of high quality own funds which are available ~~and fully~~ to absorb losses ~~to enable an undertaking to continue a going concern~~ to a substantial degree".	fully absorb losses on a going-concern basis. CEIOPS recognises that there may be a role for hybrids in tier 1, provided that their characteristics are not weakened.
690.			Confidential comment deleted	Not agreed. See response to comment 689
691.	CEA, ECO-SLV-09-441	3.167.	The provision is not in line with the Level 1 text article 94 (a). Art 94 of the Framework Directive requires Tier 1 to substantially possess the characteristics of full loss absorption. Furthermore, the Framework Directive refers to Tier 1 as "high quality capital" Redraft: 2Tier 1 should ~~be the highest quality~~ consist of high quality own funds which are available ~~and fully~~ to absorb losses ~~to enable an undertaking to continue a going concern~~ to a substantial degree".	Not agreed. See response to comment 689
692.	CFO	3.167.	The requirements around own funds are much more onerous in this consultation paper than those set out in the Directive. It is not clear why the original principles have been amended. This CP sets much more onerous requirements around own funds than set out in the Directive. There is no clear reason why the CP should change the original principles. The insurance industry was not severely impacted by the financial crisis and these revised requirements appear to be an over-reaction. Solvency II should not seek to take away key economic decisions from companies such as capital raising.	Not agreed. See response to comment 689

			CP46 should set level 2 implementing measures that provide principle based guidance on which funds fall into Tier 1, two or three, particularly for complex instruments. It should not, however, seek to change the basis for using own funds to support the SCR and MCR in the Directive. Further, Solvency II should not prevent insurers from making commercially viable decisions. Comments in 3.48 and 3.98 are also relevant here.	The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased. Having regard to the comments made, CEIOPS does not consider that convincing arguments have been put forward as to why the proposed limits are inappropriate given the need for the SCR and MCR to be met with own funds of an appropriate quality and so it proposes to retain the limits set out in CP 46.
693.	CRO Forum	3.167.	The CRO Forum does not agree with the advice to increase the Tier 1 and Tier 2 limits. This deviates from the Directive/Level 1 text. We believe the arguments that are provided are unconvincing, and could prevent companies from making commercially sound decisions when raising hybrid capital. We refer amongst others to our comments on paragraph 3.29 and paragraph 3.30, which we repeat here for convenience. The last sentence of paragraph 3.29 includes the statement: "CEIOPS has observed virtually no deferral of interest on hybrid	Noted.

			capital instruments." This statement is apparently used as an observation that hybrid capital instruments are not used for loss absorption. We do not agree with this conclusion. At times of stress management of an insurance company is looking at all alternatives to maintain capital at a sufficient level and aims at balancing the interests of the various stakeholders. The fact that some measures despite allowed are not taken does not mean that will not be taken when things go worse. Also, note that – unlike several banks and building societies - few European insurers have been severely distressed during the current crisis. Therefore it is not surprising that mechanisms intended for severe distress have not been utilised. In paragraph 3.30 it is observed that "undertakings with a strong common equity base have in general been able to withstand the crisis better". We wonder how this can be observed – as most current accounts are on a book value basis and hence does not provide any argument how this would have been developed under a market consistent approach as aimed at for Solvency II. As a result in our view this observation does not provide an argument for requiring a higher common equity base under the market consistent Solvency II framework.	
694.	FFSA	3.167.	Tier 1 is described in the European Directive as "high quality capital"	See response to comment 689
695.	German Insurance Association – Gesamtverb and der D	3.167.	The provision is not in line with the Level 1 text article 94 (a) Art 94 of the Framework Directive requires Tier 1 to substantially possess the characteristics of full loss absorption. Furthermore, the Framework Directive refers to Tier 1 as "high quality capital" Redraft:"Tier 1 should be the highest quality consist of high quality	Not agreed. See response to comment 689

			own funds which are available and fully to absorb losses to enable an undertaking to continue a going concern to a substantial degree".	
696.	Groupe Consultatif	3.167.	This is more thoroughly discussed in 3.24 through 3.27. It is argued there that it is not enough to require (as in Article 94) that Tier 1 own funds substantially possess the characteristics mentioned in Article 93, instead the CP argues that they must "fully" possess the characteristics. One could argue that such tightening should not be possible on level 2. Additionally, in 3.24 that own funds must be available in times of stress to fully absorb losses and they must be built up when undertakings are not in stress. It seems that CEIOPS is thinking this very restrictively whereas what is said in 3.24 could also be understood to mean that there is a need to facilitate the use of own funds in times of stress. Here and in the following paragraphs it appears that CEIOPS has been caught in the trap of not thinking Solvency II as a long term project and is instead concentrating on tightening the rules as a result of the current crisis. This is not a reasonable way forward and if there are fears like this the level 2 regulation should be postponed and created only after the crisis.	Not agreed. See response to comment 689
697.	Munich RE	3.167.	[… highest quality own funds and fully absorb losses to enable …] Wording goes beyond level I text: article 94:..classified in Tier 1 where they substantially possess the characteristics set out in points (a) … fully absorb losses and (b) ..Redraft: Tier 1 should consist of high-quality own funds which are able to absorb losses to a substantial degree.	Not agreed. See response to comment 689
698.	Pearl Group Limited	3.167.	This provision is not in line with the Level 1 text article 94 (a) Art 94 of the Framework Directive requires Tier 1 to substantially	Not agreed. See response to comment 689

			possess the characteristics of full loss absorption. Furthermore, the Framework Directive refers to Tier 1 as "high quality capital" Redraft:"Tier 1 should ~~be the highest quality~~ consist of high quality own funds which are available ~~and fully~~ to absorb losses ~~to enable an undertaking to continue a going concern~~ to a substantial degree".	
699.			Confidential comment deleted	
700.	Association of British Insurers	3.168.	The provision is not in line with the Level 1 text article 98.1 (a) The Framework Directive does not require Tier 1 to be significantly higher than 1/3 of the total amount of eligible own funds. Instead, it only requires Tier 1 to be higher than 1/3. Redraft: "... own funds ~~significantly~~ higher than ..."	The Directive clearly requires implementing measures and the limits in the Directive act as a backstop to these implementing measures. This approach was adopted to reflect the growing consensus at the level 1 negotiations that the amount of Tier 1 needed to be increased. Having regard to the comments made, CEIOPS does not consider that convincing arguments have been put forward as to why the proposed limits are inappropriate given the need for the SCR and MCR to be met with own funds of an appropriate quality and so it proposes to retain the limits set out in CP 46. CEIOPS notes that an impact assessment is required, and will carry this out in due course as

				part of its final advice. The calculation methods for the MCR and SCR are sufficiently clear for the limits to be established.
701.			Confidential comment deleted	
702.	BNP PARIBAS	3.168.	Tier 1 items should not be more than half the total amount of eligible own funds	See response to comment 700
703.	CEA, ECO-SLV-09-441	3.168.	The provision is not in line with the Level 1 text article 98.1 (a). The Framework Directive does not require Tier 1 to be significantly higher than 1/3 of the total amount of eligible own funds. Instead, it only requires Tier 1 to be higher than 1/3. Redraft: "... own funds ~~significantly~~ higher than ...". Also, Ceiops quote the QIS 4 results (3.11) saying that 95% of own funds were reported in Tier 1. However, this percentage is higher than reality because a lot of participants included their own funds in Tier 1 when it was unclear what to do with them. We therefore recommend than before setting minimum proportion of Tier 1 at 50%, there is a study of the impact of the new characteristics proposed by Ceiops to class own funds in Tier.	See response to comment 700
704.	CFO	3.168.	Comments in 3.48 and 3.167 are also relevant here.	See response to comment 692
705.	CRO Forum	3.168.	Provision expressed on the proportion of Tier1 in EOF is not in line with Level1 Art98.1. "Significantly" should be deleted ("the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds")	CEIOPS recognises that there may be a role for high quality hybrids in Tier 1, provided that in stressed situations, they convert or write down to provide higher

			In addition to very stringent requirement for hybrid Tier 1, we view the requirement to further increase the minimum proportion of Tier 1 as a "double whammy" (no hybrid Tier 1 possible plus higher minimum share of Tier 1 in capital), potentially placing European insurance companies at a significant cost disadvantage vis-à-vis their non-European peers as well as other financial institutions.	quality capital in the form of equity. However, CEIOPS cannot support any regime in which hybrid instruments could represent all or the most significant part of Tier 1. Any inclusion of high quality hybrids in Tier 1 should therefore be restricted i.e. they should account for no more than [20/30%] of Tier 1. As stated in CP46 CEIOPS continues to see an inherent trade-off between the requirements for the quality of own funds eligible to cover capital requirements and the limit structure applicable to the tiers to which those own funds are allocated. Therefore, it is not proposed that the limit for Tier 1 be lowered below 50% or the characteristics for hybrids be weakened i.e. they should continue to be required to absorb losses first or rank *pari passu*, in going concern, with capital instruments that absorb losses first. This approach would be consistent with the ladder of intervention. However, it is

				acknowledged that this would produce an additional gearing effect, but this is an unavoidable consequence. An alternative would be to limit hybrids by reference to a percentage of the SCR, but in the case of (re) insurers with a higher percentage of Tier 1 covering their SCR, the resulting hybrid limit would be lower. This effectively penalises firms with better quality capital, which is counter intuitive. CEIOPS considered an alternative approach whereby hybrid instruments were considered to be eligible Tier 1 own funds for the purposes of the SCR, but coverage of the MCR was restricted to ordinary share capital, the equivalent capital of mutuals, and reserves. However, it is not clear whether this would be consistent with the Level 1 text. In addition, the situation could arise where there is a breach of the MCR ahead of the SCR, which would compromise the effective operation of the ladder of intervention; and it would also result in hybrids

				representing the most significant part of Tier 1. This approach was rejected for these reasons.
706.	FFSA	3.168.	Remove the significantly since it states clearly in the Directive – "the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds".	Not agreed. See response to comment 692.
707.	German Insurance Association – Gesamtverb and der D	3.168.	The provision is not in line with the Level 1 text article 98.1 (a) The Framework Directive does not require Tier 1 to be significantly higher than 1/3 of the total amount of eligible own funds. Instead, it only requires Tier 1 to be higher than 1/3. Redraft: "... own funds ~~significantly~~ higher than ..." Also, CEIOPS quote the QIS 4 results (3.11) saying that 95% of own funds were reported in Tier 1. However, this percentage is higher than reality because a lot of participants included their own funds in Tier 1 when it was unclear what to do with them. We therefore recommend than before setting minimum proportion of Tier 1 at 50%, there is a study of the impact of the new characteristics proposed by CEIOPS to class own funds in Tier.	Not agreed. See response to comment 700 and 705
708.	Groupe Consultatif	3.168.	It is somewhat unclear to us where the mandate for this comes. Article 98 states that there must be quantitative limits and these limits shall be such as to ensure that at least conditions (a) and (b) are met meaning that Tier 1 should represent more than one third and Tier 3 less than one third of eligible own funds. Then Article 99 states that the Commission shall adopt implementing measures … the quantitative limits referred to in paragraphs 1 and 2 of Article 98. It should be impossible to actually make the limits tighter if there are some limits already in the legislation. But maybe this is ok methodologically.	Not agreed. See response to comment 700 and 705

709.	KPMG ELLP	3.168.	See 3.47 and 3.48	Not agreed. See response to comment 700 and 705
710.	Legal & General Group	3.168.	"must be significantly higher than one third" is open to interpretation. Why not just draft as "must be higher than one third"	Noted.
711.	Lloyd's	3.168.	The requirement for the proportion of Tier 1 capital to cover the SCR to be "significantly higher than one third of the total amount of eligible own funds" is out of line with the Framework Directive, which requires Tier 1 items to be "higher than one third of the total amount of eligible own funds" (Article 98(1)(a)). The paper does not provide any real justification for the more conservative approach. This requirement will reduce insurers' flexibility over their capital arrangements and, in turn, will reduce the competiveness of the European insurance industry. We consider that this proposal is excessive and arbitrary, particularly when considered in conjunction with the potential restrictions on the eligibility of hybrid instruments set out elsewhere in this paper. We suggest that the Framework Directive's intentions be respected by removing the word "significantly" from 3.168.	Not agreed. See response to comment 700 and 705
712.	Munich RE	3.168.	[… significantly higher than one third of] Wording goes beyond level 1 text: is higher than …=> "significantly" should therefore be deleted.	Not agreed. See response to comment 700 and 705
713.	OAC Actuaries and Consultants	3.168.	See comments in 3.31	Noted.
714.	Pearl Group	3.168.	The provision is not in line with the Level 1 text article 98.1 (a)	Not agreed. See response to

	Limited		The Framework Directive does not require Tier 1 to be significantly higher than 1/3 of the total amount of eligible own funds. Instead, it only requires Tier 1 to be higher than 1/3. Redraft: "... own funds ~~significantly~~ higher than ..."	comment 700 and 705
715.	Pricewaterhouse Coopers LLP	3.168.	See comments in 3.31	Noted.
716.	RBSI	3.168.	We believe "significantly higher than" is not sufficiently clear, and needs quantification. We suggest that the words "significantly higher than one third" be replaced by "at least one third".	Not agreed. See response to comment 700 and 705
717.	ROAM –	3.168.	Remove the significantly since it states clearly in the Directive - "the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds". The level 1 text sets that "the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds". But in its advice CEIOPS proposes at the same time that "the proportion of Tier 1 (…) must be significantly higher than one third of the total amount of eligible own funds" and (3.169) "to increase the amount of the quality of Tier 1". For that purpose, CEIOPS quote the QIS 4 results (3.11) saying that 95% of own funds were reported in Tier 1. However, we can think that this percentage is higher than reality because a lot of undertakings may have put their own funds in Tier 1 when they didn't know what to do. We therefore recommend than before setting minimum proportion of Tier 1 at 50%, there is a study of the impact of the new characteristics proposed by CEIOPS to classify own funds in Tier 1.	Not agreed. See response to comment 700 and 705

718.	AAS BALTA	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705
719.	AB Lietuvos draudimas	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705
720.	Association of British Insurers	3.169.	We are particularly concerned by the draconian restrictions imposed on capital eligibility by CEIOPS without any evidence or rationale to explain why the quality and quantity of each tier should made more conservative than the Framework Directive or QIS4. We believe this has been driven by an excessive reaction to failings in the banking sector. If the Solvency II regime was not implemented as expected this could have very damaging consequences to the cost of raising capital for insurers. We object to any hidden prudency layers and implicit conservatism which directly contradict the Solvency II principles. We do not agree that the average quality of own funds should be increased compared to QIS 4 This appears to be arbitrary as the aim should be to meet the 99.5% one year VaR criteria. If QIS4 has to be strengthened then CEIOPS should publish a full detailed justification, The requirements in the original directive were sufficient for insurers to maintain sufficient capital of an appropriate quality throughout the recent financial crisis. No recognition of value of transfer from with-profit funds would also be very damaging.	Not agreed. See response to comment 700 and 705
721.			Confidential comment deleted	
722.	CEA, ECO-SLV-09-441	3.169.	There is no evidence why the quality and quantity of each tiers should be made more conservative. No justification has been provided for making implementing	Not agreed. See response to comment 700 and 705

			measures more conservative than the QIS4 technical specifications. It appears that the advice has been driven by an excessive reaction to the banking crisis. The CEA is strongly convinced that the most appropriate reaction to the recent turmoil is to complete and implement the Solvency II regime as expected The proposal would result in eradicating a significant range of instruments which in the insurance sector can provide effective and efficient protection for policyholders. Moving the insurance sector towards a much higher dependency on equity capital will present a number of difficulties and will substantially the cost of doing insurance business in Europe without delivering material economic benefit. Hidden prudency layers and implicit conservatism directly contradict the objective set for Solvency II. We strongly urge Ceiops not to depart from the Framework Directive.	
723.	CFO	3.169.	The requirements to increase the quality of own funds contradict the level 1 text and are not appropriate. The quality of own funds as proposed in the level 1 text is sufficiently high to justify eligibility. There is no justification to increase this further.	Not agreed. See response to comment 700 and 705
724.	CRO Forum	3.169.	We believe the CP does not provide evidence that quantity and quality of each tiers should be made more conservative.	Not agreed. See response to comment 700 and 705
725.	DENMARK: Codan Forsikring A/S (10529638)	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705

726.	FFSA	3.169.	cf. 3. 168 and 3.174.	Noted.
727.	German Insurance Association – Gesamtverband der D	3.169.	There is no evidence why the quality and quantity of each tiers should be made more conservative. No justification has been provided for making implementing measures more conservative than the QIS4 technical specifications. It appears that the advice has been driven by an excessive reaction to the banking crisis. The CEA is strongly convinced that the most appropriate reaction to the recent turmoil is to complete and implement the Solvency II regime as expected The proposal would result in eradicating a significant range of instruments which in the insurance sector can provide effective and efficient protection for policyholders. Moving the insurance sector towards a much higher dependency on equity capital will present a number of difficulties and will substantially the cost of doing insurance business in Europe without delivering material economic benefit. Hidden prudency layers and implicit conservatism directly contradict the objective set for Solvency II. We strongly urge CEIOPS not to depart from the Framework Directive.	Not agreed. See response to comment 700 and 705
728.	Groupe Consultatif	3.169.	This, together with what is said in 3.169 makes solvency requirements actually much tighter than what was thought when the framework directive was discussed. In light of the financial crisis this is politically understandable. However it seems a highly procyclical stance.	Not agreed. See response to comment 700 and 705
729.	Legal & General Group	3.169.	We do not agree that the average quality of own funds should be increased compared to QIS 4. This appears to be arbitrary as the aim should be to meet the 1:200 criteria. If QIS4 has to be	Not agreed. See response to comment 700 and 705

			strengthened then CEIOPS should publish a full detailed justification. The requirements in the current directive were sufficient for insurers to maintain sufficient capital of an appropriate quality throughout the recent financial crisis.	
730.	Link4 Towarzystwo Ubezpieczeń SA	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705
731.	Lloyd's	3.169.	See comment to 3.168.	Noted.
732.	Munich RE	3.169.	[Increasing the quality of ….] There is no evidence to support the view that the quality and quantity of each tier should be made more conservative. Quality of own funds as proposed in level 1 text / QIS 4 is high enough to justify eligibility as own funds, i.e. we do not see any necessity to increase the quality and quantity of own funds.. It appears that CP 46 has been driven by an excessive reaction to the financial turmoil. We strongly urge CEIOS not to depart from the Framework Directive.	Not agreed. See response to comment 700 and 705
733.	NORWAY: Codan Forsikring (Branch Norway) (991 502	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705

734.	Pearl Group Limited	3.169.	The new requirements are stricter than those proposed by the Level 1 Directive, e.g. in the Directive the Tier 1 assets must make up more than a third of eligible own funds in this paper it is at least 50% and the definition of Tier 1 own funds is stronger than QIS 4. This has overstepped the mark and should revert to be in line with the Directive text. Changing the limits while keeping the QIS 4 own fund definitions would be more appropriate.	Not agreed. See response to comment 700 and 705
735.	RBSI	3.169.	We are concerned that there has not been sufficient evidence published to support this assessment.	Not agreed. See response to comment 700 and 705
736.	ROAM –	3.169.	The level 1 text sets that "the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds". But in its advice CEIOPS proposes at the same time that "the proportion of Tier 1 (…) must be significantly higher than one third of the total amount of eligible own funds" and (3.169) "to increase the amount of the quality of Tier 1". For that purpose, CEIOPS quotes the QIS 4 results (3.11) saying that 95% of own funds were reported in Tier 1. However, we can think that this percentage is higher than reality because a lot of undertakings may have put their own funds in Tier 1 when they didn't know what to do. We therefore recommend than before setting minimum proportion of Tier 1 at 50%, there is a study of the impact of the new characteristics proposed by CEIOPS to classify own funds in Tier 1.	Not agreed. See response to comment 700 and 705
737.	RSA Insurance Group PLC	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705
738.	RSA Insurance Ireland Ltd	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705

739.	RSA\32\45\32Sun Insurance Office Ltd.	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705
740.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.169.	CEIOPS has taken the increase in quality argument beyond QIS4 too far	Not agreed. See response to comment 700 and 705
741.	UNESPA (Association of Spanish Insurers)	3.169.	Own funds classification and eligibility should be based on a pragmatic criteria avoiding complexity and inflexibility The eligibility of own funds to cover the MCR and SCR should consider limits related to both, quality and quantity of own funds, but in a global manner, and taking into account also that their ultimate objective is to absorb losses that could emerge in a prudential temporal context. In this sense, we believe that the proposed structure of T1, T2 and T3 should be simplified and made more flexible, and be based on a pragmatic approach, without forgetting the prudential criteria.	Not agreed. See response to comment 700 and 705
742.	XL Capital Ltd	3.169.	We are concerned that CP 46 substantially restricts eligible capital without any apparent justification or reasoning. "Compared to QIS 4 , the average quality of own funds should be increased by: - increasing the amount and quality of Tier 1; - increasing the quality of Tier 2; and - decreasing the amount, and increasing the quality of Tier 3" This paragraph restricts eligible capital more than was anticipated by the Directive.	Not agreed. See response to comment 700 and 705

743.			Confidential comment deleted	
744.	AMICE	3.170.	Trigger points should be set at the level of the MCR. This will not have an adverse effect on the level of policyholder protection as supervisors can take other adequate measures once the SCR is breached.	Not agreed. See response to comment 700 and 705
745.	Association of British Insurers	3.170.	We disagree with both options proposed by CEIOPS. Option1 The proposed elimination of innovative tier 1 would have significant adverse consequences for insurer's capital quality and would increase the cost of raising capital for insurers, a cost which would be ultimately borne by the policyholder. Innovative tier 1 instruments represent high quality capital and have been used by issuers to strengthen their capital position as this provides non-dilutive capital and because the coupons are tax deductible. The features of such instruments are significantly more extensive than those proposed for tier 2 in the CP. Option 2 The requirements for hybrid capital instruments would make them extremely unattractive: they would carry an investment risk equivalent to that of ordinary shares, but without the upside an equity investor expects from the potential price increase of shares and without any shareholder voting rights; its coupon would have to be at least the expected total return on an investment in ordinary shares, probably even higher to compensate for lack of voting rights – a prohibitive cost - to persuade anyone to invest in such an instrument. Furthermore, we believe that setting automatic triggers at the SCR level is inappropriate. As well as making hybrids highly	Not agreed. See response to comment 700 and 705

			unattractive, this would implicitly introduce a third capital requirement by forcing undertakings to hold a significant buffer above the SCR to absorb short term volatility. We believe that having the SCR as a hard target is inconsistent with the Directive. This proposal would add an explicit margin of prudence to the capital requirement which is in direct contradiction to the principle of Solvency II. The practical effect of this will be to change the SCR into the real MCR. Instead, having automatic triggers at the MCR level would provide policyholders with appropriate protection, especially considering the powers the supervisor will have under the ladder of supervisory intervention approach under Solvency II. Finally, we would highlight that as well as conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that non-cumulative payment deferral (principal or coupon) and in certain circumstances deferral with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis.	
746.			Confidential comment deleted	
747.	BNP PARIBAS	3.170.	Tier 1 capital should not be limited to ordinary shares (or equivalent) as such an extreme restriction will drive the cost of capital for insurance companies prohibitively high, does not provide a level playing field compared to the banking sector and is totally inconsistent with the new Capital Requirements Directive for the banking sector due to be implemented from 31st December 2010 onwards. Insurers should benefit from a framework that offers a level playing field across Europe to manage their capital structures efficiently.	Not agreed. See response to comment 700 and 705

			Ideally, such framework should be similar to other frameworks, primarily in the banking sector, so that existing technology can be easily adapted to insurance companies and a large and liquid pool of investors may be tapped at a cost-efficient price.	
748.	CEA, ECO-SLV-09-441	3.170.	Both options are unviable. Option 1 is not in line with the Level text. It would create a Tiering system which is very different from what is expected by the Level 1 text that set out some features for Tier 1. If the level 1 text expected only ordinary shares to be included in tier 1, it would have explicitly been stated. Option 2 would make insurance hybrid instruments unattractive to investors and increase the cost of raising capital for insurers and their policyholders. The requirement to absorb losses first and rank pari passu with shareholders capital is not in line with the Level 1 text which only requires subordination to policyholders' claims and to other senior investors. Furthermore, there should not be any de facto restriction on how undertakings absorb losses as this would depend on each case. Allowing hybrid instruments only if investors are treated worse than equity holder will not work. The restrictive requirements proposed by Ceiops on tier 1 mean that investors will have to take the full downside-risk as equity holders but without the chance of upside-benefits. Such instruments are not marketable. It is also crucial that capital instruments characteristics are assessed jointly. Setting automatic triggers at the SCR level is unrealistic. As well as making hybrids highly unattractive, it would implicitly introduce a third capital requirement by forcing undertakings to hold a significant buffer above the SCR to absorb short term volatility. We	Not agreed. See response to comment 700 and 705

			believe that having the SCR as a hard target is inconsistent with the ladder of supervisory intervention approach as it would fail to recognise that temporary breaches of the SCR (e.g. because of a temporary fall in financial markets) are not necessarily a sign of serious or irreversible financial weakness. Furthermore, it should be considered that where a trigger has been activated, undertakings are likely to find it very hard to raise new issues with similar triggers as investors will be very wary. Instead, having automatic triggers at the MCR level would provide policyholders with adequate protection, especially considering the powers the supervisor will have under the ladder of supervisory intervention approach under Solvency II. Furthermore, automatic conversion or write downs would create fiscal problems in many countries. This is because in many cases payments would not be deductible from taxes. Hybrid coupon payments are generally tax deductible. They can therefore lower the cost of capital for the undertaking and its policyholders (compared to traditional preferred securities and common equity) and enhance the undertakings after-tax cash flow. For a company whose capital position is between the SCR and MCR, supervisory powers should be proportionate and escalating commensurate with the level of breach of the solvency control level. Supervisory intervention should also depend upon specific circumstances of the company and general economic conditions where possible macro-economic pro-cyclical effects should be avoided. A degree of flexibility is therefore required, and a principle based approach to intervention is most likely to achieve this. To this end we believe that the degrees of intervention should range from the company being required to produce a recovery plan to unilateral supervisory action to best protect policyholders once	

			the MCR is breached. As part of the recovery plan, it should be left to the undertaking to decide on how to de-risk or how to absorb losses first which may include using some of the risk absorbing features of some of its capital instruments such as conversions, write-downs, deferrals. When a breach of the SCR occurs, triggers should remain optional for the issuer depending on how it thinks losses should be absorbed first and consistent with what it has presented to the supervisor as part as the recovery plan. Beside conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that non-cumulative (or non-cash cumulative) payment deferrals (principal or coupon) and deferrals with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis (see CEA working paper on deferral of coupon and principal payments – 15 December 08: http://www.cea.eu/uploads/DocumentsLibrary/documents/1229438911_cea-working-paper-on-deferral-of-coupon-and-principal-payments.pdf) Furthermore we believe that the CP should address the application of ACSM dividend pushers and stoppers which are commonly used features of insurance capital instruments. Redraft: "~~Restrict~~ Tier 1 ~~to~~ shall consist of ordinary share capital or the equivalent capital of mutual and mutual-type undertakings, and reserves, the use of which is not restricted and ~~Restrict Tier 1 as in 1 above, plus~~ hybrid capital instruments/ subordinated liabilities, ~~provided they absorb losses first or rank pari passu, in going concern, with capital instruments that absorb losses first~~ which	

			meet the fully loss absorption criteria to a substantial degree. Such items could include, for example, ~~automatically~~ convertible instruments, ~~and~~ instruments subject to permanent or temporary write down or to deferral of coupons or principal as long as losses persist, where conversion ~~or~~, write down or deferrals would take place as and when the undertaking needs to absorb losses, and in any case when the insurance or reinsurance undertaking breaches its ~~Solvency~~ Minimum Capital Requirement."	
749.	CFO	3.170.	Tier 1 capital should not be restricted to ordinary share capital and reserves; hybrid capital should also be included within the definition. Restriction of Tier 1 capital to include only ordinary share capital would mean a huge disadvantage for insurance companies compared to the banking industry, where Tier 1 capital also includes hybrid capital. We recommend that hybrid capital is also included within this definition. The requirements for subordination go beyond those outlined in the level 1 text. The level 1 treatment should be maintained. The requirements for subordination go beyond those outlined in the level 1 text as level 1 only asks for a minimum subordination to all claims of policyholders and other senior creditors. Loss absorption ranking pari passu with shareholders would not be acceptable for hybrid investors. Such instruments would not be marketable, as hybrid investors would bear the same downside risk as shareholders, but would not participate in any upside. Apart from conversion and write-down, other means to absorb losses should be accepted. Therefore instruments without conversion into equity features or write-down should not be automatically excluded from Tier 1.	Not agreed. See response to comment 700 and 705

			The choice of trigger point is not appropriate. Setting the trigger point at the SCR level is too low. This would increase the risk for investors and therefore would have a negative impact on marketability and pricing. We recommend that the trigger point be very close to the MCR. Comments in 3.33 and 3.195 are also relevant here.	CEIOPS maintains its view that an MCR based trigger would be ineffective given that an MCR breach results in ultimate supervisory action. Any trigger between the MCR and the SCR would create an additional level for the undertaking to monitor and would not be consistent with the Level 1 text. A trigger based on the SCR is therefore needed to ensure that action is taken sufficiently early to maintain the undertaking as a going concern.
750.	CRO Forum	3.170.	We note that the criteria for Tier 1 eligibility are far more restrictive than currently written in the Directive. As currently written in this CP, essentially only ordinary shares will qualify as Tier 1. That's why only option 2 meets the spirit of the Directive. However, automatic conversion and write down provision will create tax problems in many countries and we propose to approach loss absorption from an economic principle; suggest to also include deferral of coupons as long as losses persist.	Not agreed. See response to comment 700 and 705
751.	European Union member firms of Deloitte Touche To	3.170.	Tier 1 capital instruments Paragraph 3.170 notes two possible methods of increasing the quality of Tier 1 capital. We support the proposal to include as Tier 1 certain capital instruments other than ordinary share capital but please note below our comments on the loss absorbency and	See response to comment 700 and 705

			duration of such capital instruments. Loss absorbency of Tier 1 capital instruments The advice requires that "Tier 1 capital instruments rank pari passu, in going concern, with capital instruments that absorb losses first". This appears to require that all Tier 1 instruments (other than ordinary shares) rank equally and absorb losses on a going concern basis ether before or "pari passu" with ordinary shares. Therefore typical non-cumulative preference shares that rank for repayment before ordinary shares on a winding up but without specific provisions for loss absorbency on a going concern basis would not appear to meet this requirement and thus be classified as Tier 2. Such instruments would need to have specific going concern loss absorbency provisions in order to be classified as Tier 1. The "pari passu" requirement would mean that there could not be a priority ranking for capital instruments other than ordinary share capital on a going concern – all capital instruments other than ordinary shares would be required to rank "pari passu" with each other. We suggest that it would meet the principles of the directive if all such instruments were required to be fully loss absorbent in a going concern, in advance of ordinary shares without being "pari passu" with each other. This would give insurers more flexibility in the terms of Tier 1 capital instruments.	
752.	FFSA	3.170.	The first option would create a Tiering system which is very different from the spirit of the Level 1 txt that set out some features to consider for inclusion as Tier 1. If the spirit was to include ordinary shares only in tier 1, it would have been written down. This is not the case so only option 2 meets the spirit of the	See response to comment 700 and 705

			Level 1 text. We agree with the wording of option 2. Beside conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that conversion into equity with the possibility of a later write up and non-cumulative payment deferral (principal or coupon) and in certain circumstances deferral with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis (see CEA working paper on deferral of coupon and principal payments – 15 December 08)	
753.	German Insurance Association – Gesamtverb and der D	3.170.	Both options are unviable Option 1 is not in line with the Level text It would create a Tiering system which is very different from what is expected by the Level 1 text that set out some features for Tier 1. If the level 1 text expected only ordinary shares to be included in tier 1, it would have explicitly been stated. Option 2 would make insurance hybrid instruments unattractive to investors and increase the cost of raising capital for insurers and their policyholders The requirement to absorb losses first and rank pari passu with shareholders capital is not in line with the Level 1 text which only requires subordination to policyholders' claims and to other senior investors. Furthermore, there should not be any de facto restriction on how undertakings absorb losses as this would depend on each case. Allowing hybrid instruments only if investors are treated worse than equity holder will not work. The restrictive requirements proposed	See response to comment 700, 705 and 749

			by CEIOPS on tier 1 mean that investors will have to take the full downside-risk as equity holders but without the chance of upside-benefits. Such instruments are not marketable. It is also crucial that capital instruments characteristics are assessed jointly. Setting automatic triggers at the SCR level is unrealistic. As well as making hybrids highly unattractive, it would implicitly introduce a third capital requirement by forcing undertakings to hold a significant buffer above the SCR to absorb short term volatility. We believe that having the SCR as a hard target is inconsistent with the ladder of supervisory intervention approach as it would fail to recognise that temporary breaches of the SCR (e.g. because of a temporary fall in financial markets) are not necessarily a sign of serious or irreversible financial weakness. Furthermore, it should be considered that where a trigger has been activated, undertakings are likely to find it very hard to raise new issues with similar triggers as investors will be very wary. Instead, having automatic triggers at the MCR level would provide policyholders with adequate protection, especially considering the powers the supervisor will have under the ladder of supervisory intervention approach under Solvency II. Furthermore, automatic conversion or write downs would create fiscal problems in many countries. This is because in many cases payments would not be deductible from taxes. Hybrid coupon payments are generally tax deductible. They can therefore lower the cost of capital for the undertaking and its policyholders (compared to traditional preferred securities and common equity) and enhance the undertakings after-tax cash flow. For a company whose capital position is between the SCR and MCR, supervisory powers should be proportionate and escalating commensurate with the level of breach of the solvency control	

			level. Supervisory intervention should also depend upon specific circumstances of the company and general economic conditions where possible macro-economic pro-cyclical effects should be avoided. A degree of flexibility is therefore required, and a principle based approach to intervention is most likely to achieve this. To this end we believe that the degrees of intervention should range from the company being required to produce a recovery plan to unilateral supervisory action to best protect policyholders once the MCR is breached. As part of the recovery plan, it should be left to the undertaking to decide on how to de-risk or how to absorb losses first which may include using some of the risk absorbing features of some of its capital instruments such as conversions, write-downs, deferrals. When a breach of the SCR occurs, triggers should remain optional for the issuer depending on how it thinks losses should be absorbed first and consistent with what it has presented to the supervisor as part as the recovery plan. Beside conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that non-cumulative (or non-cash cumulative) payment deferrals (principal or coupon) and deferrals with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis (see CEA working paper on deferral of coupon and principal payments – 15 December 08: http://www.cea.eu/uploads/DocumentsLibrary/documents/1229438911_cea-working-paper-on-deferral-of-coupon-and-principal-payments.pdf) Furthermore we believe that the CP should address the application	

			of ACSM dividend pushers and stoppers which are commonly used features of insurance capital instruments. Redraft: "~~Restrict~~ Tier 1 ~~to~~ shall consist of ordinary share capital or the equivalent capital of mutual and mutual-type undertakings, and reserves, the use of which is not restricted and ~~Restrict Tier 1 as in 1 above, plus~~ hybrid capital instruments/ subordinated liabilities, ~~provided they absorb losses first or rank pari passu, in going concern, with capital instruments that absorb losses first~~ which meet the fully loss absorption criteria to a substantial degree. Such items could include, for example, ~~automatically~~ convertible instruments, ~~and~~ instruments subject to permanent or temporary write down or to deferral of coupons or principal as long as losses persist, where conversion ~~or~~, write down or deferrals would take place as and when the undertaking needs to absorb losses, and in any case when the insurance or reinsurance undertaking breaches its ~~Solvency~~ Minimum Capital Requirement."	
754.	GROUPAMA	3.170.	We do not agree with CEIOPS' restriction on Tier 1 instruments, which prohibits payment of the coupon when the SCR is breached. We question putting the trigger point at the SCR level. Supervisors and the undertaking can take other adequate measures to protect policyholders when the SCR is breached. Not paying the coupon could be one such solution. This should be automatic only in the case of an MCR breach.	See response to comment 749
755.	Groupe Consultatif	3.170.	CEIOPS has made in 3.29 the observation that during the financial crisis there was "virtually no deferral of interest on hybrid capital instruments" whereas "dividends on ordinary shares have been reduced or withheld". From this CEIOPS makes the conclusion that share capital is a better form of solvency capital. It could be argued that undertakings should better explain their plans as regards the use of solvency buffers. This could be done in ORSA to make not only supervisors but more essentially investors better aware how	Noted. See response to comment 700 and 705

			an undertaking acts when risks materialise. However we feel that the evidence collected is as such enough to change the categorisation of different forms of own funds. Therefore we support alternative 2 of the approaches. We refer to our comments under point 3.174	
756.	KPMG ELLP	3.170.	See 3.33	Noted
757.	Legal & General Group	3.170.	Given traditional debt (fixed income) investors are willing to take certain loss absorption risks associated with capital instruments during times of distress, it is valuable to continue to enable this in future and spread such risks as broadly as possible across different types of investors. Accordingly, we believe that non-ordinary share capital instruments form an essential part of Tier 1 capital provided that such instruments have sufficient loss absorption characteristics to enable insurance groups to continue as going concern operations during periods of financial stress. The hybrid Tier 1 markets are deep and established for both issuers and investors, and offer attractive opportunities for both parties.	Noted. See response to comment 700 and 705
758.	Lloyd's	3.170.	Sub-paragraph 1: The idea of restricting Tier 1 to share capital and its equivalent would eliminate an important source of Tier 1 capital for insurers ie hybrid capital. No justification is provided for this proposal, which does not reflect the Framework Directive. Sub-paragraph 2: we propose that any automatic write-down/conversion arrangements for subordinated debt should be triggered by a breach of MCR, not SCR as the minimum solvency level. The requirement for the SCR to act as the trigger point would make the issue of such debt very unattractive to potential investors and thus very expensive for issuers.	Noted. See response to comment 700 and 705
759.	Munich RE	3.170.	[1. Restrict Tier 1 to ordinary share capital … 2. they absorb losses first or rank pari passu … automatically	Not agreed. See response to comment 700, 705 and 749

			convertible instruments , instruments subject to write down … when the ….. undertaking breaches its SCR.] The criteria for Tier 1 eligibility are much more restrictive than currently laid down in the Directive. 1. The restriction of Tier 1 to ordinary share capital would mean a huge disadvantage for insurance companies compared to the banking industry, where Tier 1 also includes hybrid capital. Tier 1 capital should not be limited to ordinary shares (or equivalent), as such an extreme position will drive the cost of capital for insurance companies prohibitively high and does not provide a level playing field compared to the banking sector. Given traditional debt (fixed income) investors are willing to take certain loss absorption risks associated with capital instruments during times of distress (e.g. deferral of interest payments) it is valuable to continue to enable this in future and spread such risks as broadly as possible across different types of investors. Accordingly, we believe that non-ordinary share capital instruments should also form an essential part of Tier 1 capital provided that such instruments have sufficient loss absorbent characteristics. The hybrid capital Tier 1 markets are deep and established for both insurers and investors, and offer attractive opportunities for both parties. 2. Also option 2 is more restrictive than the Directive and the proposal for the banking industry and would therefore make hybrid instruments unattractive to investors and increase the cost of raising capital for insurers and their policyholders. Insurers should benefit from a framework that offers a level playing field across Europe to manage their capital structures efficiently. Such framework should be similar to other frameworks, primarily in the banking sector, so that existing technology can be easily adapted to insurance companies and a large and liquid pool of	

			investors may be tapped at a cost-efficient price. Subordination goes beyond level 1 text, as level 1 only asks for a minimum subordination to all claims of policyholders and other senior creditors. Loss absorption pari passu with shareholders would not be acceptable for hybrid investors => such instruments would not be marketable, as hybrid investors would bear the same downside risk as shareholders, but would not participate in any upside. The characteristics of hybrid instruments should not be overly onerous. A Tier 1 hybrid instrument complements an issuer´s traditional equity base and in order to retain a deep and liquid investor base, the instrument should provide for a preferential right of return and ranking compared to ordinary shares. Besides conversion and write-down, other means of absorbing losses should be accepted [=> e.g. interest deferral also reduces the cash flow and the capital leaving the issuer]. Therefore instruments without write-down or conversion into equity features should not be automatically excluded from Tier 1. Moreover automatic conversion or write-down would create fiscal problems in some jurisdictions (=> i.e. no level playing field). Currently hybrid coupon payments are generally tax-deductible. The issue of these instruments therefore enables the after-tax capital cost of insurers and their policyholders to be reduced. In addition, a write-down is not effective, as it does not increase the capital base of an issuer. A fundamental underpinning of the global Tier 1 hybrid capital markets is that hybrid capitals instruments rank senior to ordinary shares on an ongoing basis and in liquidation. An equity conversion feature would violate this basic tenet, because hybrid capital instruments holders and ordinary shareholders would rank equally	

			in liquidation. Most fixed income investors which provide the backbone of the market are prevented from buying securities with no fixed face value. As a result, the size of the market likely would decline and the cost of issuing hybrid capital instruments likely would rise in order to compensate investors for greater subordination risk. In addition, whilst investment appetite for real money investors may be diminished, there is likely to be increased demand for hedge funds seeking equity optionality. Consequently, we fear that we will see an unwanted shift in the investor base for such hybrid Tier 1 transactions – a shift from real money investors towards trading-oriented investors resulting in more market volatility caused by increased trading activities. Setting the trigger point at the SCR-level is too early. This would increase investor risk and would therefore have a negative impact on marketability / pricing. The trigger point should be at or at least very close to the MCR. This would be sufficient and much more investor-friendly. Redraft: Tier 1 shall consist of ordinary share capital or the equivalent capital of mutual and mutual-type undertakings, and reserves, the use of which is not restricted, and hybrid capital instruments / subordinated liabilities, which meet the loss-absorption criteria to a substantial degree. Such items could include, for example convertible instruments, instruments subject to temporarily write-down or with interest deferral features as long as losses persist, where conversion, write-down or deferral would take place if the insurance or reinsurance undertaking breached its Minimum Capital Requirement.	
760.	Pearl Group Limited	3.170.	We disagree with both options proposed by CEIOPS. Option1 The proposed elimination of innovative tier 1 would have significant	Not agreed. See response to comment 700, 705 and 749

			adverse consequences for insurer's capital quality and would increase the cost of raising capital for insurers, a cost which would be ultimately borne by the policyholder. Innovative tier 1 instruments represent high quality capital and have proved this by absorbing huge losses during the financial crisis. Innovative tier 1 has been used by issuers to strengthen their capital position as this provides non-dilutive capital and because the coupons are tax deductible. The features of such instruments are significantly more extensive than those proposed for tier 2 in the CP. Option 2 The requirements for hybrid capital instruments would make them extremely unattractive: they would carry an investment risk equivalent to that of ordinary shares, but without the upside an equity investor expects from the potential price increase of shares and without any shareholder voting rights; its coupon would have to be at least the expected total return on an investment in ordinary shares, probably even higher to compensate for lack of voting rights – a prohibitive cost\32\45\32to persuade anyone to invest in such an instrument. Furthermore, we believe that setting automatic triggers at the SCR level is inappropriate. As well as making hybrids highly unattractive, this would implicitly introduce a third capital requirement by forcing undertakings to hold a significant buffer above the SCR to absorb short term volatility. We believe that having the SCR as a hard target is inconsistent with the Directive. This proposal would add an explicit margin of prudence to the capital requirement which is in direct contradiction to the principle of Solvency II. The practical effect of this will be to change the SCR into the real MCR.	

			Instead, having automatic triggers at the MCR level would provide policyholders with appropriate protection, especially considering the powers the supervisor will have under the ladder of supervisory intervention approach under Solvency II. Finally, we would highlight that as well as conversion and write down, other means with similar loss absorbing features under an economic view should be considered for Tier 1 capital. We believe that non-cumulative payment deferral (principal or coupon) and in certain circumstances deferral with Alternative Coupon Settlement Mechanisms achieve the same loss absorption and effective policyholder protection on a going-concern basis and on a winding-up basis.	
761.	UBS	3.170.	Given traditional debt (fixed income) investors are willing to take certain loss absorption risks associated with capital instruments during times of distress, it is valuable to continue to enable this in future and spread such risks as broadly as possible across different types of investors. Accordingly, we believe that non-ordinary share capital instruments form an essential part of Tier 1 capital provided that such instruments have sufficient loss absorbent characteristics to enable insurance groups to continue as going concern operations during periods of financial stress. The hybrid Tier 1 markets are deep and established for both issuers and investors, and offer attractive opportunities for both parties. Also, a hybrid Tier 1 security is inconsistent with a fixed income investor's mandate where the security ranks parri passu with common equity in liquidation. The vast majority of hybrid Tier 1 issues are senior to common equity. Although there is no certainty that hybrid Tier 1 will deliver better recovery results in liquidation, fixed income investors are often not allowed to hold securities which rank pari passu with common equity. Investors have	Agreed. See response to comment 700 and 705

			repeatedly mentioned to us in the past that when a security is deeply subordinated they would only consider buying hybrid Tier 1 securities of the most strongly capitalised institutions (i.e. those who do not necessarily require to raise new capital in the first place).	
762.	UNESPA (Association of Spanish Insurers)	3.170.	Both options are very restrictive CEIOPS points out two alternatives to improve Tier 1 quality but we consider that neither of them are reasonable options for insurers, because they raise very restrictive criteria, considering that only instruments that behave like equity (whether pure equity or hybrid) can be considered as Tier I items, which is aggravated with the limits that CEIOPS proposed to be considered for Tier 1. (See 3.33 and 3.36).	Noted.
763.	XL Capital Ltd	3.170.	We disagree with both options proposed by CEIOPS. 1. Restricting Tier 1 to ordinary share capital and reserves would exclude Innovative Tier 1 instruments which represent high quality capital and which the industry has historically relied upon successfully. 2. Allowing hybrid capital instruments / subordinated liabilities as Tier 1, but only where they meet the stringent criteria set out in 3.170 would make them highly unattractive.	Noted.
764.	Association of British Insurers	3.171.	We agree that only a full paid in instrument is fully available to absorb losses. In certain cases however, it may not be appropriate to apply this criteria, for example when looking at the present value of future shareholder transfers. This will need to be addressed as part of the guidance on ring-fenced funds.	Noted.
765.			Confidential comment deleted	
766.	CEA,	3.171.	9.	

	ECO-SLV-09-441			
767.	CFO	3.171.	The CFO Forum agrees with the point made in this paragraph.	Noted
768.	FFSA	3.171.	Appears reasonable	Noted.
769.	German Insurance Association – Gesamtverband der D	3.171.	30.	
770.	KPMG ELLP	3.171.	See 3.38	Noted
771.	Pearl Group Limited	3.171.	We agree that only a full paid in instrument is fully available to absorb losses. In certain cases however, it may not be appropriate to apply this criteria, for example when looking at the present value of future shareholder transfers.	Noted.
772.			Confidential comment deleted	
773.	CEA, ECO-SLV-09-441	3.172.	The provision goes beyond the Level 1 text. There is no apparent justification why the provision should go beyond the Framework Directive text which only requires subordination. Delete paragraph.	Noted.
774.	CFO	3.172.	The requirements go beyond those outlined in the level 1 text. The level 1 treatment should be maintained. Level 1 only requires subordination for Tier 3 instruments whereas level 2 requires Tier 3 instruments to “contribute to avoiding insolvency”. We recommend that the level 1 text is maintained.	Noted.

775.	CRO Forum	3.172.	The advice in this paragraph is unclear. Tier 3 is the lowest quality capital and subject to both regulatory approval and withdrawal. However, this paragraph is proposing that if it is included in own funds, it can be used to avoid insolvency even though the Solvency II Directive suggests that these funds could be withdrawn by the regulator at any time. It is difficult to see how this would work in practice and what type of capital would meet such requirements particularly in respect of Groups. That's why we suggest to remove this paragraph (given that there are no specific restrictions in Tier 3 in Level 1 Text) or at least to clarify the features requested.	Noted.
776.	FFSA	3.172.	We feel further clarifications on the features of Tier 3 would be needed	Noted.
777.	German Insurance Association – Gesamtverb and der D	3.172.	The provision goes beyond the Level 1 text There is no apparent justification why the provision should go beyond the Framework Directive text which only requires subordination. Delete paragraph.	Noted.
778.	Groupe Consultatif	3.172.	The last sentence could even be read so the Tier 3 should accelerate insolvency and should be written more clearly.	Noted
779.	Munich RE	3.172.	[…. Tier 3 basic own funds should contribute towards ….] Wording goes beyond level I text! Level 1 only requests subordination => therefore we propose to delete this paragraph..	See response to comment 700 and 705.
780.	RBSI	3.172.	We suggest the words "acceleration towards insolvency" are replaced by "avoiding acceleration towards insolvency"	Noted and agreed. Change will be made to improve clarity
781.			Confidential comment deleted	

782.	BNP PARIBAS	3.173.	In essence, Solvency Capital Requirements are higher than Minimum Capital Requirements. As such, meeting the higher requirement should in itself be sufficient and we feel that reducing the eligible capital would only add more complexity. One of the goals of Solvency II should be to increase transparency. We believe that having two measures of capital applied to two different levels of requirements reduces transparency. Therefore, we would suggest that a single definition of capital is used for both SCR and MCR.	Not agreed. Not in line with the Directive text.
783.	CEA, ECO-SLV-09-441	3.173.	See comment to 3.174.	Noted.
784.	CFO	3.173.	The wording contrasts with Article 98.1 (a) of the level 1 text. The level 1 treatment should be maintained. Comments in 3.48 are also relevant here.	See response to comment 700 and 705.
785.	CRO Forum	3.173.	Comments on 3.173 through 3.175. There should be a compromise between limits and eligibility. The conjunction of very strict qualification criteria listed under 3.190 (i.e. essentially ordinary shares qualify as Tier 1) and high minimum threshold that is recommended under 3.174 (T1 representing a minimum of 50% of own funds) seems unrealistic and to a certain extent penalises insurers who have issued high quality hybrid capital. We have not found a basis for the conclusion that Tier 1 items in eligible own funds should at least be 50%. (We refer also to our comments on paragraphs 3.30 and 3.167) and as a result we believe there is no reason to deviate from the Directive text that states it is at least 33%.	See Comments for 318 - 338

			Similarly we have not found any argument for lowering the proportion of Tier 3 elements below the 33% as stated in the Directive. We also caution to be too restrictive here as the value of Tier 1 capital items can be very volatile in times of stressed markets – with the Tier 2 and 3 elements relatively more stable. This warrants a more flexible approach (as included in the Directive) and we believe the suggested approaches are too restrictive.	
786.	FFSA	3.173.	See comment below	
787.	German Insurance Association – Gesamtverband der D	3.173.	See comment to 3.174	See response to comment 318 - 338
788.	Groupe Consultatif	3.173.	We feel that directive rules are tight enough. Additionally is this really meant to say that when there is no Tier 2 capital then there can be no Tier 3 capital either?	See response to comment 700 and 705. Paragraph 3.47 will be clarified to remove the misunderstanding over the eligibility of Tier 3.
789.	KPMG ELLP	3.173.	See 3.47	Noted.
790.	Lloyd's	3.173.	We consider that the structure of Tier 1 > Tier 2 > Tier 3 is artificial and of no apparent merit.	Noted.
791.	Munich RE	3.173.	There should be a compromise between limits and eligibility. The combination of very strict criteria as listed under 3.190 and a high minimum threshold as recommended under 3.174 (Tier 1 representing a minimum of 50% of own funds) seems to be	See response to comment 700 and 705.

			unrealistic. To our mind there is no reason to deviate from the Directive text that states at least 33%. In addition in our view there is no reason to lower the proportion of Tier 3 elements below the 33% as stated in the Directive.	
792.	OAC Actuaries and Consultants	3.173.	See comments at 3.47.	Noted.
793.	Pricewaterho useCoopers LLP	3.173.	See comments at 3.47.	Noted.
794.	AMICE	3.174.	AMICE believes that Level 2 implementing measures should not depart from the criteria used in the QIS 4 Technical Specifications. In this regard, the proportion of Tier 1 items should be at least 1/3 (and not 50%) of the total amount of eligible own funds. There is no justification to either set a minimum limit of 5% or a maximum limit of 15% for Tier 3 eligible elements of capital (Level 1 text defines a maximum limit of 33%).	See response to comment 700 and 705.
795.	Association of British Insurers	3.174.	The provision goes beyond the original requirement set out in Level 1 at article 98.1 (a) There is no justification why the limit structure proposed in the Framework Directive should be changed. There is no empirical evidence for the proposed arbitrary limits for T1, 2 and 3. These limits are unrealistic in particular when combined with the definitions proposed by CEIOPS for each tier. We strongly urge CEIOPS not to depart from the limits set in the level 1 text. In particular, these new requirements are untested by	See response to comment 700 and 705.

			way of a QIS and therefore the potential impact of these changes in different market conditions is uncertain (especially when combined with all the advice the other consultation papers). The original level 1 text keeps enough flexibility to be able to manage this uncertainty.	
796.	CEA, ECO-SLV-09-441	3.174.	The provision goes beyond the original requirement set out in Level 1 at article 98.1 (a). There are no reasons suggesting the limit structure proposed in the Framework Directive should be changed. There is no empirical evidence for the proposed arbitrary limits for T1, 2 and 3. These limits are unrealistic in particular when combined with the definitions proposed by Ceiops for each tier. We strongly urge Ceiops not to depart from the limits set in the level 1 text. Indeed, the only requirement should be that tier 1 instruments exceed tier 2 that exceed tier 3. Since tier 3 should be lower than tier 2, the tier 3 max should be 25%, and not 15% as proposed. With respect to tier 3, the sentence mentions both a 5% to 25% range and a maximum of 15%. Tier 3 should be limited to 25% of eligible own funds. The proposal would result in eradicating a significant range of instruments which in the insurance sector can provide effective and efficient protection for policyholders. With Solvency II, there may be an increased market-wide need for new capital which could heavily affect markets. If the today's situation is to be continued we have concerns that markets will not be able to sufficiently meet the new needs for capital of the insurance industry sector. Also, potentially such severe consequences for undertakings emphasis the need of grandfathering rules.	See response to comment 700 and 705.

			For this reason, we believe that an appropriate impact assessment is needed before setting higher limits than those of QIS4. An assessment of the impact of new limits at the level of undertakings eligible own funds but also an appraisal of their impact on the capital instruments markets and the cost of capital for insurers compared to banks. Indeed, we are concerned that a new Tiering system very different from the one of the banking sector will contribute to create confusion for analysts and investors, reducing the financial flexibility of insurers and the confidence in the financial strength of European insurers.	
797.	CFO	3.174.	The wording contrasts with Article 98.2 of the level 1 text. The level 1 treatment should be maintained. Comments in 3.48 are also relevant here.	See response to comment 700 and 705.
798.			Confidential comment deleted	
799.	FFSA	3.174.	Threshold for Tier 1, 2 and 3 FFSA would like to emphasize that the thresholds suggested by CEIOPS (50% for Tiers 1, 15% for Tiers 3) are inconsistent with the Directive text and recommends to stick to the directive prescriptions (Tier 1 > Tier 2 > Tier 3). As such, we firmly disagree with these thresholds. CEIOPS specifies that, for SCR compliance, “the proportion of Tier 1 items in eligible own funds should be at least 50% of the total amount of eligible own funds and that the proportion of Tier 3 items in eligible own funds should be included in the range 15% max of the total amount of eligible funds”? As indicated, the only consideration should be that tier 1 instruments exceed tier 2 that exceed tier 2. Also, since tier 3	

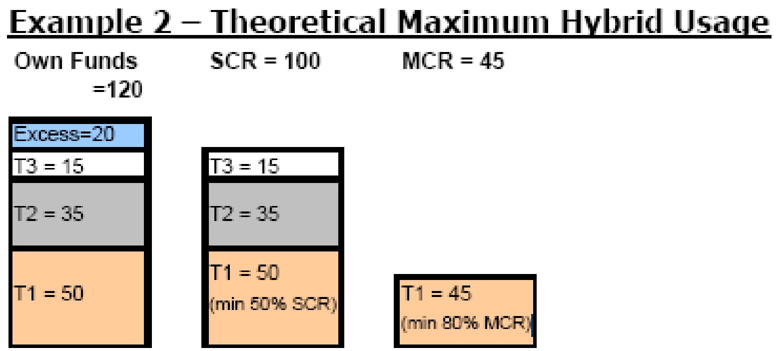
			should be lower than tier 2, the tier 3 max should be 25%, and not 15% as proposed. Eligibility in Tier 1 instruments (3.174 and 3.190/3.191) There should be a compromise between limits and eligibility. The conjunction of very strict qualification criteria listed under 3.190 (i.e. essentially ordinary shares qualify as Tier 1) and high minimum threshold that is recommended under 3.174 (T1 representing a minimum of 50% of own funds) seems unrealistic and to a certain extent penalises insurers who have issued high quality hybrid capital. We would recommend to widen the eligibility criteria, in particular for Tier 1. We are concerned that bank insurance groups would benefit from the wider T1 qualification criteria of the banking sector to finance their insurance activities. Furthermore, we are concerned that a new Tiering system very different from the banking sector will contribute to create confusion for analysts and investors, reducing the financial flexibility of insurers and the confidence in the financial strength of European insurers. We would therefore strongly recommend aligning the criteria further with the CEBS proposal.	
800.	German Insurance Association – Gesamtverb and der D	3.174.	The provision goes beyond the original requirement set out in Level 1 at article 98.1 (a) There are no reasons suggesting the limit structure proposed in the Framework Directive should be changed. There is no empirical evidence for the proposed arbitrary limits for T1, 2 and 3. These limits are unrealistic in particular when combined with the definitions proposed by CEIOPS for each tier. We strongly urge CEIOPS not to depart from the limits set in the level 1 text.	See response to comment 700 and 705.

			Indeed, the only requirement should be that tier 1 instruments exceed tier 2 that exceed tier 3. Since tier 3 should be lower than tier 2, the tier 3 max should be 25%, and not 15% as proposed. With respect to tier 3, the sentence mentions both a 5% to 25% range and a maximum of 15%. Tier 3 should be limited to 25% of eligible own funds. The proposal would result in eradicating a significant range of instruments which in the insurance sector can provide effective and efficient protection for policyholders. With Solvency II, there may be an increased market-wide need for new capital which could heavily affect markets. If the today's situation is to be continued we have concerns that markets will not be able to sufficiently meet the new needs for capital of the insurance industry sector. Also, potentially such severe consequences for undertakings emphasis the need of grandfathering rules. For this reason, we believe that an appropriate impact assessment is needed before setting higher limits than those of QIS4. An assessment of the impact of new limits at the level of undertakings eligible own funds but also an appraisal of their impact on the capital instruments markets and the cost of capital for insurers compared to banks. Indeed, we are concerned that a new Tiering system very different from the one of the banking sector will contribute to create confusion for analysts and investors, reducing the financial flexibility of insurers and the confidence in the financial strength of European insurers.	
801.	GROUPAMA	3.174.	We would like to emphasize that the thresholds suggested by CEIOPS (50% for Tier 1, 15% for Tier 3) is inconsistent with the text of the Directive. In our view CEIOPS does not give sufficient explanation when it suggests lower thresholds than the Level 1 text	See response to comment 700 and 705.

			for Tiers 2 and 3.	
802.	Groupe Consultatif	3.174.	In general we support the retaining of the total balance sheet and the 99.5 % confidence level. We believe that any changes to capital requirement considered by CEIOPS should be: • reflected in the SCR calculation • based on evidence We discourage strengthening capital requirements outside the SCR for the following reasons: • Lack of transparency • Need for allignment of internal capital models with regulatory capital requirements and avoidance of regulary arbitrage Lack of consistency with the total balance sheet approach	See response to comment 700 and 705.
803.	INTERNATIONAL GROUP OF P&I CLUBS	3.174.	The IG notes the proposal that at least 50% of the SCR should be backed by Tier 1 capital.	Noted.
804.	KPMG ELLP	3.174.	See 3.48	Noted
805.	Lloyd's	3.174.	We disagree with CEIOPS recommendations set out in this paragraph. We consider that the recommendations are excessive and arbitrary, particularly when considered in conjunction with potential restrictions on the eligibility of hybrid instruments set out elsewhere in this paper. The requirement for the proportion of Tier 1 capital to cover the SCR of at least 50% (or as some members have suggested, at least	See response to comment 700 and 705.

			60%), is significantly more onerous than the 1/3 minimum proposed in the Directive. An unduly high requirement will reduce insurers' flexibility over their capital arrangements and this will harm the competiveness of the European insurance industry.	
806.	OAC Actuaries and Consultants	3.174.	See comments at 3.51 and 3.52.	Noted. See response to Comment 343
807.	Pearl Group Limited	3.174.	The provision goes beyond the original requirement set out in Level 1 at article 98.1 (a) There is no justification why the limit structure proposed in the Framework Directive should be changed. There is no empirical evidence for the proposed arbitrary limits for T1, 2 and 3. These limits are unrealistic in particular when combined with the definitions proposed by CEIOPS for each tier. We strongly urge CEIOPS not to depart from the limits set in the level 1 text.	See response to comment 700 and 705.
808.	Pricewaterho useCoopers LLP	3.174.	See comments at 3.51 and 3.52.	Noted.
809.	ROAM –	3.174.	ROAM believes that level 2 implementing measures should not depart from the criteria used in the QIS 4 Technical Specification. In this regard the proportion of Tier 1 items in eligible own funds should be at least 1/3 (and not 50%) of the total amount of eligible own funds. There is no justification to neither set a minimum limit of 5% nor a maximum limit of 15% for Tier 3 eligible elements of capital (Level 1 text defines maximum limit of 33%).	See response to comment 700 and 705.

810.	UNESPA (Association of Spanish Insurers)	3.174.	Limits to own funds classification and eligibility should be coherent with the Framework Directive and the current insurance industry own funds We understand that CEIOPS is proposing a rigid limit structure, subject to strict rules that go against the flexibility criteria, which should be considered when analyzing the sufficiency of available own funds to meet capital requirements globally. Therefore, we suggest that Tier 1 represents 50% of the total SCR eligible own funds, and Tier 3 less than 15%, reflecting a strong tightening, in relation to the Level 1 text (Article 98) proposed treatment, which states a proportion of 1 / 3 for each Tier. According to CEIOPS establishes in the reference 3.46, it will be necessary to assess the impact that the new proposed structure will have (scheduled for the third wave), and therefore it is understood that results must come, in order to validate the proposed structure. Additionally, we believe that limits should not be linked to eligible own funds (which could cause an accelerating effect on the undertaking undercapitalization regarding capital requirements coverage), but linked to minimum capital requirements (MCR), where maximum quality is assumed. See 3.47 and 3.48	See response to comment 700 and 705.
811.	XL Capital Ltd	3.174.	The change to limits for coverage of the SCR (a minimum of 50% by Tier 1 and a maximum of somewhere in the range between 5% and 25% by Tier 3) is stricter than the minimum levels set out in Article 98 of the Directive We urge CEIOPS not to depart from the limits set in the level 1 text.	Noted. See response to Comment 316
812.	AMICE	3.175.	The limit of Tier 1 capital covering the MCR should be at least 50% of the total amount of eligible own funds (and not 80%).	Noted. See response to Comment 323

			We suggest amending the paragraph as follows: "The proportion of Tier 1 items in eligible own funds is at least ~~80%~~ 50% of the total amount of eligible own funds".	
813.	Association of British Insurers	3.175.	There is no justification for arbitrarily setting the limit of Tier 1 capital covering the MCR to 80%. In practice, we would expect that under the proposed requirements, most insurers would have to meet their MCR exclusively with Tier 1 (see example below), making the proposed 80% floor almost irrelevant, except in situations of stresses where tier 1 capital drops.  Source: HSBC Capital solutions – CEIOPS – Hybrids and Subordinated Debt under Solvency II, July 9th 2009 We would welcome clarification on the interaction between the group and the solo level in terms of capital requirements. It is unclear to us how the solo capital requirements / solo solvency assessment / group solvency assessment will interact and we suspect that given the restrictions imposed by CEIOPS the group MCR will be dangerously close to the group SCR.	Noted. See response to Comment 323 Noted. However this relates to Group MCR and SCR.

814.			Confidential comment deleted	
815.	CEA, ECO-SLV-09-441	3.175.	There is no justification for arbitrarily setting the limit of Tier 1 capital covering the MCR to 80%.	Noted. See response to Comment 323
816.	CFO	3.175.	Comments in 3.48 are also relevant here.	Noted
817.			Confidential comment deleted	
818.	FFSA	3.175.	See comment 3.174. With respect to the minimum capital requirements, and in compliance with level 1 of Directive, tier 1 should represent at least 50% of total eligible own funds. We disagree with the 80% threshold.	Noted. See response to Comment 323
819.	German Insurance Association – Gesamtverband der D	3.175.	There is no justification for arbitrarily setting the limit of Tier 1 capital covering the MCR to 80%.	Noted. See response to Comment 323
820.	Groupe Consultatif	3.175.	We do not agree with the proposal to tighten the requirements.	Noted. See response to Comment 323
821.	INTERNATIONAL GROUP OF P&I CLUBS	3.175.	The IG supports the proposal that at least 80% of the MCR should be backed by Tier 1 capital. The limits set out in 3.174 and 3.175 have the advantage that for insurers with only Tier 1 and Tier 2 ancillary own funds it is it less likely that MCR will be breached before SCR.	Noted.
822.	KPMG ELLP	3.175.	See 3.52	
823.	Lloyd's	3.175.	The proposal to require that at least 80% of the MCR must be	Noted. See response to Comment

			covered by Tier 1 basic own funds is arbitrary and presented with no justification. We recommend that the 50% minimum as set out in the Framework Directive be retained.	323
824.	Pearl Group Limited	3.175.	There is no justification for arbitrarily setting the limit of Tier 1 capital covering the MCR to 80%. In practice, we would expect that under the proposed requirements, most insurers would have to meet their MCR exclusively with Tier 1 (see example below), making the proposed 80% floor almost irrelevant, except in situations of stresses where tier 1 capital drops. We would welcome clarification on the interaction between the group and the solo level in terms of capital requirements. It is unclear to us how the solo capital requirements / solo solvency assessment / group solvency assessment will interact and we suspect that given the restrictions imposed by CEIOPS the group MCR will be dangerously set close to the group SCR.	Noted. See response to Comment 323
825.	RBSI	3.175.	We believe that 80% is too high.	
826.	UNESPA (Association of Spanish Insurers)	3.175.	As in the SCR (see 3.174), we understand that the proposed limits for the MCR, have tightened dramatically on comparison with the Level 1 limits (Article 98), from a structure of 50% of Tier 1 and Tier 2, to a structure of 80%\32\45\3220% respectively.	Noted. See response to Comment 323
827.	XL Capital Ltd	3.175.	The change to limits for coverage of the MCR (a minimum of 80% by Tier 1) is stricter than the minimum levels set out in Article 98 of the Directive. We urge CEIOPS not to depart from the limits set in the level 1 text.	Noted. See response to Comment 323
828.	CEA, ECO-SLV-	3.176.	Additional tier 3 requirements are beyond the Level I text. The new requirements by Ceiops cannot be base on the Level I text	Noted. See response to comment 266

	09-441		which requires only subordination as characteristic.	
829.	German Insurance Association – Gesamtverband der D	3.176.	Additional tier 3 requirements are beyond the Level I text The new requirements by CEIOPS cannot be base on the Level I text which requires only subordination as characteristic.	Noted. See response to comment 266
830.	Groupe Consultatif	3.176.	For example ORSA could show this and it should also be communicated to investors.	Noted. See response to comment 266
831.	Association of British Insurers	3.177.	See comments under 3.174	Noted.
832.	CEA, ECO-SLV-09-441	3.177.	The requirement is inconsistent with the ladder of intervention. The requirement would implicitly introduce a third capital requirement by forcing undertakings to hold a buffer above the SCR to absorb short term volatility. We would expect however that early warning indicators are indentified as part of the ORSA and discussed with supervisors as part of the supervisory review process. Redraft: "...Tier 3 basic own funds be freely payable, when an undertaking's solvency position has breached the Minimum Capital Requirement ~~is deteriorating, or is foreseen to deteriorate~~".	Not agreed.
833.	CFO	3.177.	The definition of "deteriorating" and "foreseen to deteriorate" is not clear. The references to "deteriorating" and "foreseen to deteriorate" are confusing. The definitions are not clear and there is no reference to the level of solvency required. Further clarity around this is requested.	Noted.

834.	FFSA	3.177.	This part "recommends that Tier 3 basic own funds should not be freely redeemable or that coupons on these own funds should not be freely payable when an undertaking's solvency position is deteriorating". Instead of deterioration, FFSA recommends that the above condition be met in case of MCR breach	Noted
835.	German Insurance Association – Gesamtverb and der D	3.177.	The requirement is inconsistent with the ladder of intervention The requirement would implicitly introduce a third capital requirement by forcing undertakings to hold a buffer above the SCR to absorb short term volatility. We would expect however that early warning indicators are indentified as part of the ORSA and discussed with supervisors as part of the supervisory review process. Redraft: "...Tier 3 basic own funds be freely payable, when an undertaking's solvency position has breached the Minimum Capital Requirement ~~is deteriorating, or is foreseen to deteriorate~~. "	Not agreed.
836.	Munich RE	3.177.	No definition: Clearer guidance is needed, as it is not clear, what is meant by deteriorating or forseen to deteriorate. Trigger point should be set at MCR level	Not agreed. Inconsistent with L1 text and the supervisory ladder of intervention. Ultimate supervisory action takes place upon breach of the MCR
837.	Association of British Insurers	3.178.	See comments under 3.170. The trigger point should be set at the level of the MCR.	Not agreed. See response to comment 837
838.	CEA, ECO-SLV-09-441	3.178.	The trigger point for cash flows relating to own fund items (coupon and principal payments) should be set at the MCR level for the reasons explained in our comment to 3.170. (This comment relates to all funds, including Tier 3 item).	Not agreed. See response to comment 837

			Redraft: "...~~Solvency~~ Minimum Capital Requirement...".	
839.	CFO	3.178.	Comments in 3.33 and 3.85 are also relevant here.	Noted.
840.	CRO Forum	3.178.	This paragraph requires re-approval of all cash flows from Own Funds if the SCR is breached. We do not see the need for this in case of breaching the SCR. The document does not provide an argument. We recommend a re-approval in case the MCR is breached (and not the SCR).	Not agreed. See response to comment 837
841.	FFSA	3.178.	Since this comment relates to all funds, including Tier 3 item, we would recommend replacing SCR with MCR	Not agreed. See response to comment 837
842.	German Insurance Association – Gesamtverband der D	3.178.	The trigger point for cash flows relating to own fund items (coupon and principal payments) should be set at the MCR level for the reasons explained in our comment to 3.170. (This comment relates to all funds, including Tier 3 item). Redraft: "...~~Solvenc~~y Minimum Capital Requirement..."	Not agreed. See response to comment 837
843.	Lloyd's	3.178.	This requirement should be triggered by a breach of MCR, not SCR, as the minimum solvency level. The requirement for the SCR to act as the trigger point would make the issue of such debt very unattractive to potential investors and thus very expensive for issuers.	Not agreed. See response to comment 837
844.	Munich RE	3.178.	All cash flows on own funds items (including coupon and principal payments) should be subject to supervisory approval once the Solvency Capital Requirement (SCR) is breached. => In our view, trigger points should not be set at the SCR, but at or at least very close to the MCR. Otherwise the marketability of the instruments would be endangered, as the risk investors face would be increased.	Not agreed. See response to comment 837
845.	OAC	3.178.	See 3.60.	Noted.

	Actuaries and Consultants			
846.	Pearl Group Limited	3.178.	The trigger point should be set at the level of the MCR.	Not agreed. See response to comment 837
847.	PricewaterhouseCoopers LLP	3.178.	See 3.60.	Noted.
848.	KPMG ELLP	3.179.	See 3.68	Noted.
849.	AMICE	3.180.	CEIOPS mentions that prior supervisory approval is needed whenever any "conversion, redemption or exchange of capital instruments (including premiums paid)" is made. AMICE members believe that the approval process should be facilitated and harmonized through the use of clearly pre-defined criteria. As such, any change in nature of capital instruments or redemption being contractual and the contract being reviewed by the supervisor should not require an additional approval, except in case of breaching the SCR. AMICE underlines that the last supervisory approval must be renewed automatically in order to avoid sticking points for setting up annual reports.	Noted.
850.	Association of British Insurers	3.180.	It is unclear why prior supervisory approval should be systematically required before any redemption, conversion or exchange of capital instruments, in particular on ongoing concern basis. We do not understand why changes in the nature of the instrument in particular when this has been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-	Noted.

			approval. A requirement for regulatory approval is completely different from subordination, which determines the relative ranking of various obligations. The two should not be confused. A requirement for prior supervisory approval, regardless of the regulatory capital position of a firm, is unduly restrictive and burdensome. Whilst a firm complies with its regulatory capital requirements, it should be able to manage its financial and capital position without the need for prior supervisory approval. It is not clear whether the requirement for regulatory approval also applies to ordinary shares. If not, the requirements for hybrids would be more restrictive than those for ordinary shares. In cases where the MCR has been breached, we recommend that a time limit of one month is set under level 2 for supervisors to render their decision.	
851.			Confidential comment deleted	
852.	CEA, ECO-SLV-09-441	3.180.	It is unclear why prior supervisory approval should be systematically required before any redemption, conversion or exchange of capital instruments, in particular on ongoing concern basis. We do not understand why changes in the nature of the instrument in particular when this have been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-approval. In cases where the MCR has been breached, we recommend that a time limit of one month is set under level 2 for supervisors to render their decision. Furthermore, in order to ensure consistency and efficiency of the	Noted.

			approval process, we suggest that clearly pre-defined criteria are developed under level 2.	
853.	CFO	3.180.	The timescales for supervisory approval should be defined. We recommend that the duration of the supervisory approval process be no more than one month. Further clarification is required as to why redemption should be subject to prior supervisory approval in non-stressed situations.	Noted.
854.	CRO Forum	3.180.	It is not clear why the supervisory approval is required on ongoing concern basis (i.e redemption). For conversion or exchange of capital instruments, in order to smooth the process, we suggest CEIOPS to list clear pre-defined criteria for such approval process. A requirement for prior regulatory approval, regardless of the regulatory capital position of a firm, may be unduly restrictive and burdensome. Whilst a firm complies with its regulatory capital requirements, it should be able to manage its financial and capital position without the need for prior supervisory approval. Also, note that - a requirement for regulatory approval is different from subordination, which determines the relative ranking of various obligations. The two should not be confused.	Noted.
855.	FFSA	3.180.	CEIOPS mentions that prior supervisory approval is needed whenever any "conversion, redemption or exchange of capital instruments (including premiums paid)" is made. In order to be less time consuming and burdensome, FFSA suggests that approval process should be facilitated and harmonized through the use of clearly pre-defined criteria. As such any change in nature of capital instrument or redemption being contractual and the contract being reviewed by the supervisor, we do not see any reason for an additional approval, except in the case	

			of solvency breach. We recommend adding a maximum time to reach supervisors answer on that point that could be no more than 1 month.	
856.	German Insurance Association – Gesamtverband der D	3.180.	It is unclear why prior supervisory approval should be systematically required before any redemption, conversion or exchange of capital instruments, in particular on ongoing concern basis. We do not understand why changes in the nature of the instrument in particular when this have been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-approval. In cases where the MCR has been breached, we recommend that a time limit of one month is set under level 2 for supervisors to render their decision. Furthermore, in order to ensure consistency and efficiency of the approval process, we suggest that clearly pre-defined criteria are developed under level 2.	Noted.
857.	KPMG ELLP	3.180.	See 3.128	Noted.
858.	Munich RE	3.180.	Any redemption …. should be subject to prior supervisory approval. This "soft maturity" approach is problematic for dated instruments. Many outstanding dated insurance subordinated capital instruments feature explicit maturities which are not extendable. More clarity is needed at least. The more clarity can be given around when regulators would or would be entitled to prohibit redemption, and the more remote such a scenario is, the more marketable the instrument is likely to be to hybrid capital investors.	Noted.
859.	Pearl Group Limited	3.180.	It is unclear why prior supervisory approval should be systematically required before any redemption, conversion or	Noted.

			exchange of capital instruments, in particular on ongoing concern basis. We do not understand why changes in the nature of the instrument in particular when this have been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-approval. A requirement for regulatory approval is completely different from subordination, which determines the relative ranking of various obligations. The two should not be confused. A requirement for prior regulatory approval, regardless of the regulatory capital position of a firm, is unduly restrictive and burdensome. Whilst a firm complies with its regulatory capital requirements, it should be able to manage its financial and capital position without the need for prior supervisory approval. It is not clear whether the requirement for regulatory approval also applies to ordinary shares. If not, the requirements for hybrids would be more restrictive than those for ordinary shares. In cases where the MCR has been breached, we recommend that a time limit of one month is set under level 2 for supervisors to render their decision.	
860.	RBSI	3.180.	"Any redemption, conversion or exchange of capital instruments, including any premium paid on those instruments, should be subject to prior supervisory approval". Where an instrument is issued for a specific term (redeemable at undertaking's option) it should be redeemable on those terms without supervisory approval provided it can be redeemed without causing a breach of SCR.	Noted.
861.	XL Capital Ltd	3.180.	It is not clear to us why an undertaking that comfortably meets its SCR should be required to obtain prior supervisory approval for "any redemption, conversion or exchange of capital instruments,	Noted.

			including any premiums paid in on those instruments"? It is our opinion that the undertaking should be free to manage its capital as long it does not prejudice its solvency position. As a subsidiary point it is also not clear whether this proposed prior supervisory approval, once granted, remains validity for the life of the instrument under review providing that the said transactions take place in the contractually planned option window, or whether re-approval would be required.	
862.	Association of British Insurers	3.181.	We agree with the statement that the issue date is the appropriate basis for assessing whether an instrument has sufficient duration.	Noted.
863.	CEA, ECO-SLV-09-441	3.181.	Ceiops considers that "the issue date could be an appropriate framework basis for capital instruments included in own funds". We agree with this consideration.	Noted.
864.	CFO	3.181.	CEIOPS should not place so much importance on the ability to defer interest; other measures are used by insurers following major loss events. CP46 places a high priority on the ability to defer interest however this is not the only way of taking a loss and other approaches such as restructuring and capital raising are used by insurers following major loss events. CEIOPS should not place so much importance on the ability to defer interest. This is only one component of capital management. Comments in 3.69 are also relevant here.	Noted.
865.	FFSA	3.181.	CEIOPS considers that "the issue date could be an appropriate framework basis for capital instruments included in own funds". FFSA agrees with this consideration.	Noted.

			For Solvency II first time application (FTA), FFSA proposes to take original issue date as framework basis for capital instruments whatever the FTA date	
866.	German Insurance Association – Gesamtverband der D	3.181.	CEIOPS considers that "the issue date could be an appropriate framework basis for capital instruments included in own funds". We agree with this consideration.	Noted.
867.	Munich RE	3.181.	We agree that maturity should refer to the maturity at the issue date (i.e. reference point = issue date, not reporting date).	Noted.
868.	Pearl Group Limited	3.181.	We agree with the statement that the issue date is the appropriate basis for assessing whether an instrument has sufficient duration.	Noted.
869.	Association of British Insurers	3.182.	Covers 3.182 to 3.186 We do not agree with the need to develop level 2 measures on the link of the duration of capital instruments with the duration of liabilities There should be no direct link between the duration of insurance liabilities and the duration of capital instruments to meet the SCR. If only the longest dated insurance liability of an issuer was taken into account to determine the duration of its liabilities, this duration could be significantly overstated. A cash-flow based assessment would be more accurate and we favour this approach. We accept the case for a minimum duration of each tier which is a more appropriate indicator of performance and quality of capital. However, we would argue that capital is a buffer against adverse experience (and with the inclusion of the risk margin there is incentive to recapitalise the firm) and so the duration of the liabilities are less relevant.	Agreed. See response to comment 370

870.			Confidential comment deleted	
871.	CEA, ECO-SLV-09-441	3.182.	Covers 31.183 to 3.186. We do not agree with the need of developing level 2 measures directly linking the duration of capital instruments with the duration of liabilities. Mainly for the following reasons: • Liabilities are backed by assets, not other liabilities (debt). • Own funds are meant to cover the SCR which for regulatory purposes has been calibrated over a 1 year time horizon and therefore any assessment beyond a 1 year time horizon framework for Solvency II should be performed as part of the ORSA. Instead, we agree with 3.78 whereby undertaking are to assess the sufficient duration of own fund items as part of their risk management beyond one year. We do not agree however that this assessment should be made publicly available (See comments to 3.78) Provided the direct link with liabilities is removed and that the maturity date is defined as the contractual maturity date, we do agree with the minimum maturity duration proposed for each tier as an indicator of performance and quality of capital. We would also recommend a minimum maturity before the first call date at issuance should be set at 5 years for Tier 1 and 3 years for Tier 2. We would also like the advice to explicitly clarify that this requirement does not apply to supplementary member calls.	Agreed. See response to comment 370
872.	CFO	3.182.	Comments in 3.69 and 3.181 are also relevant here.	Noted.
873.	CRO Forum	3.182.	We note that the requirements as drafted seems to indicate that	See response to comment 370

			full Tier 1 capital needs to be held at the longest liability duration, not having regard to the fact that a portfolio will run-off gradually. Hence a weighting based on maturity durations would be more appropriate.	
874.	European Union member firms of Deloitte Touche To	3.182.	Duration of capital instruments We suggest that unless determination of the duration of liabilities is based on expected cash flows it will not give a meaningful result for long tail general insurers where liabilities are due when incurred but may take an extended period to be settled.	Agreed. See response to comment 370
875.	FFSA	3.182.	Covers 31.183 to 3.186 We do not agree with the need of developing level 2 measures on the link of the duration of capital instruments with the duration of liabilities Provided the link with liabilities is removed, and that the maturity date is defined as the contractual maturity date, we do agree with the minimum maturity duration proposed for each tier. We would also recommend a minimum maturity before the first call date at issuance should be set at 5 years for Tier 1 and 3 years for Tier 2.	Agreed. See response to comment 370
876.	German Insurance Association – Gesamtverb and der D	3.182.	Covers 31.183 to 3.186 We do not agree with the need of developing level 2 measures directly linking the duration of capital instruments with the duration of liabilities Mainly for the following reasons: • liabilities are backed by assets, not other liabilities (debt) • own funds are meant to cover the SCR which for regulatory purposes has been calibrated over a 1 year time horizon and therefore any assessment beyond a 1 year time horizon	Agreed. See response to comment 370

			framework for Solvency II should be performed as part of the ORSA Instead, we agree with 3.78 whereby undertaking are to assess the sufficient duration of own fund items as part of their risk management beyond one year. We do not agree however that this assessment should be made publicly available (see comments to 3.78) Provided the direct link with liabilities is removed and that the maturity date is defined as the contractual maturity date, we do agree with the minimum maturity duration proposed for each tier as an indicator of performance and quality of capital. We would also recommend a minimum maturity before the first call date at issuance should be set at 5 years for Tier 1 and 3 years for Tier 2. We would also like the advice to explicitly clarify that this requirement does not apply to supplementary member calls.	
877.	International Underwriting Association of London	3.182.	We note that CEIOPS has not settled on a precise definition of "duration of liabilities". We would oppose an approach that defines duration as the maturity of the longest dated insurance liability. Firstly it may not be easy to ascertain such a maturity length precisely. Furthermore, some lines of business might be best described as "very long tail"; an example of such business would be Employers' Liability insurance covering industrial disease. A disease such as Mesothelioma, developing as a result of asbestos exposure, could develop as much as 50 years after the initial exposure. Finding instruments of this maturity or greater would be particularly challenging. To further illustrate, the Institute of Actuaries November 2004 report "UK Asbestos - the definitive guide" estimated that the future cost of asbestos to the UK insurance industry could be between £4bn - £10bn with "well over half of this relates to Mesothelioma claims which are predicted to continue to	Agreed. See response to comment 370

			rise for the next ten years". By contrast, the number of conventional Gilts of a maturity of 20 years or more (in 2004) only amounted £50.8bn, and indexed linked gilts of the same maturity (nominal including inflation uplifted) amounting to £18.9bn [according to the UK Debt Management Office figures]. Although this is a very crude and flawed analysis, it might be indicative that such an approach might have the potential to create distortions in the Gilt market, (given their relative proportions) even at the tail-end of the asbestos claims cycle. A shortage of suitable instruments would mean that core equity capital might have to be relied upon to cover such liabilities. We would therefore prefer duration to be interpreted either as a weighted average of contractual maturity dates, or on a projected cash flow basis. Furthermore, it should also be noted that it cannot be ruled out that similar long-tail liabilities will not occur in the future (for example the possible consequences of nanotechnology has been mooted as the source of such risks), along with the fact that, in the UK at least, it is only recently that gilts of 50 year maturities have been issued.	
878.	Pearl Group Limited	3.182.	Covers 3.182 to 3.186 We do not agree with the need to develop level 2 measures on the link of the duration of capital instruments with the duration of liabilities There should be no direct link between the duration of insurance liabilities and the duration of capital instruments to meet the SCR. If only the longest dated insurance liability of an issuer was taken into account to determine the duration of its liabilities, this duration could be significantly overstated. A cash-flow based assessment would be more accurate and we favour this approach. However, long term business is more likely to be supported by long term capital instruments. We accept the case for a minimum duration of	Agreed. See response to comment 370

			each tier which is a more appropriate indicator of performance and quality of capital.	
879.	UNESPA (Association of Spanish Insurers)	3.182.	We agree on selecting modified duration We consider "modified duration" as the adequate approach to define liabilities duration, which considers either maturity date, or cash flows and interest rate, so combines the three alternatives proposed by CEIOPS, but considering the liabilities sensitivity to interest rate as a risk measure.	See response to comment 370
880.	Association of British Insurers	3.183.	We do not agree with the stringent approach to defining duration for Tier 1 funds. Stringent is not an appropriate word. The criteria is to meet the 99.5 one year VaR criteria. We believe that this would be better achieved through an approach that was based duration on projected cash flows.	Agreed. See response to comment 370
881.	BNP PARIBAS	3.183.	Duration requirements should not be specific to individual entities in order to permit a level playing field across issuers to raise hybrid capital from investors based globally that have expressed a desire for a uniform asset class to ensure a deep and liquid capital market.	Agreed. See response to comment 370
882.	CEA, ECO-SLV-09-441	3.183.	The approach consisting in defining the duration as the maturity of the longest date insurance liability is unrealistic and may in practice result in only perpetual instrument qualifying for Tier 1.	Agreed. See response to comment 370
883.	CFO	3.183.	Duration should not be defined as the maturity of the longest dated insurance liability as it would lead to an overstatement of duration. Defining the duration as the maturity of the longest date insurance liability is not economic and would lead to an overstated duration. The proposition stated in 3.184 is a more appropriate method. Comments in 3.63, 3.69 and 3.181 are also relevant here.	Agreed. See response to comment 370

884.	FFSA	3.183.	Using the final maturity date does not appear a realistic solution since the longest maturities are not always defined in both in life insurance products and for a number of non-life insurance business lines and may in practice means that only perpetual instrument would qualify. The approach consisting in defining the duration as the maturity of the longest date insurance liability is not economic and would lead to an overstated duration. We prefer the proposition stated in 3.184	Agreed. See response to comment 370
885.	German Insurance Association – Gesamtverb and der D	3.183.	The approach consisting in defining the duration as the maturity of the longest date insurance liability is unrealistic and may in practice result in only perpetual instrument qualifying for Tier 1.	Agreed. See response to comment 370
886.	Groupe Consultatif	3.183.	The stringent approach seems to be inconsistent with the total balance sheet approach because this could lead to a duration mismatch between assets and liabilities	Agreed. See response to comment 370
887.	KPMG ELLP	3.183.	See 3.70	Noted.
888.	Legal & General Group	3.183.	We do not agree with the stringent approach to defining duration for Tier 1 funds. Stringent is not an appropriate word. The criteria is to meet the 1:200 criteria. We believe that this would be better achieved through an approach that was based on duration of projected cash flows or contractual maturity date.	Agreed. See response to comment 370
889.	Lloyd's	3.183.	We disagree with the proposed approach. The paper appears to view own funds as an additional amount of assets backing the technical provisions and as a result defines the	Agreed. See response to comment 370

			sufficiency of for example Tier 1 capital in relation to matching the longest liability durations. We consider however that the purpose of available surplus (ie to cover the SCR) is to have a buffer in case of deterioration, on top of the amount of assets backing insurance liabilities (in this case at the 99.5% VaR Solvency II requirement). While we agree that available surplus needs to be available to fully absorb losses on a going concern basis as well as in the case of winding-up, we do not interpret this as a requirement that Tier 1 capital should have a duration equal to the longest dated insurance liability. There should not be a problem if the liabilities are running off at least as fast as the capital matures.	
890.	Munich RE	3.183.	…. In our view it is not appropriate to link the maturity of hybrid capital to the duration of the longest-dated insurance liability => this would result in a hypothetical overstated duration. The directive only states, that "where an own fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking shall be considered." A direct link between the maturity of the instrument and the duration of the insurance liabilities is not required. Duration requirements should not be specific to individual entities in order to permit a level playing field across insurers to raise capital from investors globally that have expressed desire for a uniform asset class to ensure a deep and liquid capital market.	Agreed. See response to comment 370
891.	RBSI	3.183.	This approach is too draconian. The longest dated insurance liability could be many decades long, and could form a very small part of the book (eg- annuity payments relating to motor bodily injury claims).	Agreed. See response to comment 370
892.	CEA, ECO-SLV-09-441	3.184.	See comment to 3.183.	Noted.

893.	CFO	3.184.	Comments in 3.69, 3.73, 3.85 and 3.181 are also relevant here.	Noted.
894.	FFSA	3.184.	We share the concern that taking the longest dated insurance liability would result in an overstated duration. (see 3.183 for our suggestion)	Agreed. See response to comment 370
895.	German Insurance Association – Gesamtverband der D	3.184.	See comment to 3.183	Noted.
896.	Groupe Consultatif	3.184.	This seems more in line with an economic approach. 3.183 with the longest dated liability certainly is not an economic approach.	Agreed. See response to comment 370
897.	OAC Actuaries and Consultants	3.184.	The approach to base the duration on cash flows is preferred to that based on maturity of insurance liabilities.	Noted.
898.	PricewaterhouseCoopers LLP	3.184.	The approach to base the duration on cash flows is preferred to that based on maturity of insurance liabilities.	Noted.
899.	RBSI	3.184.	We agree that an approach based on projected cashflows is to be preferred.	Noted.
900.	UNESPA (Association of Spanish Insurers)	3.184.	We agree on that assuming the longest dated insurance liability for Tier 1, as an objective parameter for Tier 1 maturities is an overestimation and also we consider that the liabilities duration should be linked to assets duration, but not to capital duration, which main objective is absorb losses. See 3.186	Noted. See response to comment 370

901.	Association of British Insurers	3.185.	The maturity date used for the calculation of the duration of the instruments should be the contractual maturity date. The duration of the instrument should be based on the contractual possibility of repayment when this is mandatory or can be called upon by the holder of the instrument. When the issuer has the option not to call the instrument then the contractual maturity date should be used.	
902.			Confidential comment deleted	
903.	BNP PARIBAS	3.185.	Duration should be based on the contractual maturity date where an issuer is obligated to redeem and not the first contractual possibility of repayment. The financial crisis has demonstrated that although there may be incentives to redeem and the possibility of calling hybrid capital, as there is no obligation to redeem, issuers may elect not to do so.	Noted. See response to comment 370
904.	CEA, ECO-SLV-09-441	3.185.	The maturity date used for the calculation of the duration of the instruments should the contractual maturity date. The duration of the instrument should be based on the contractual possibility of repayment when this is mandatory or can be called upon by the holder of the instrument. When the issuer has the option not to call the instrument then the contractual maturity date should be used. Indeed, the first call date may be considered as the effective maturity only in circumstances where the incentives to redeem does not meet the criteria set out for each Tier. Ordinary shares can be called (bought back) at any time so we think considering the call date as the effective maturity date would put too strong a constraint on hybrid capital instruments compared to ordinary shares.	Noted. See response to comment 370

905.	CFO	3.185.	The duration of the capital instrument should be defined as the time to maturity. Duration should be defined as the legal maturity of the instrument rather then the first call date. Incentives to redeem (e.g. coupon step-ups) should be allowed in order to increase the marketability of hybrid instruments. The crisis has shown that despite coupon step-ups, some companies have decided not to call subordinated bonds. As banks are explicitly allowed incentives to redeem, the current CEIOPS proposal would not create a level playing field. Comments in 3.73, 3.85 and 3.181 are also relevant here.	
906.	CRO Forum	3.185.	We disagree with the proposal that duration should be defined as the "first contractual opportunity to redeem" an instrument (in 3.69 and 3.73). In particular for Tier1 hybrid instrument, a call date with moderate step-up cannot be considered as the effective maturity date. This ignores the value of and flexibility provided by short first call dates which do not coincide with step-ups or market expectations of redemption. Such a call option has considerable value for the issuer, both because of the option value and because of the flexibility it provides. A first call date without step-up or reputational impact of not being exercised is found frequently in retail targeted instruments. The behaviour of issuers on the first call dates of those instruments has demonstrated clearly that they are making use of the flexibility and will call or not call depending on their own requirements. So in general, we recommend that the duration of an instrument should be the legal maturity and not the call date. This call date	Noted. See response to comment 370

			may be considered as the effective maturity only in circumstances where the incentives to redeem does not meet the criteria set out for the Tier sought.	
907.	FFSA	3.185.	The maturity date used for the calculation of the duration should be the legal maturity and not the call date. This call date may be considered as the effective maturity only in circumstances where the incentives to redeem does not meet the criteria set out for the Tier sought. Ordinary shares can be called (bought back) at any time so we think considering the call date as the effective maturity date would put too strong a constraint on hybrid capital instruments compared to ordinary shares. FFSA does not understand why liabilities shorter than 3 years should be excluded from the eligible elements, as it is eligible capital to face any one-year event. In addition, one of the core objectives of the Solvency II Directive is the creation of a more harmonised regulatory playing field for insurers. In particular, the current proposal from CEIOPS regarding duration of eligible Tier 1 elements should be aligned the CEBS proposal to avoid creating a competitive disadvantage for insurers relative to bancassurers.	Noted. See response to comment 370
908.	German Insurance Association – Gesamtverb and der D	3.185.	The maturity date used for the calculation of the duration of the instruments should the contractual maturity date. The duration of the instrument should be based on the contractual possibility of repayment when this is mandatory or can be called upon by the holder of the instrument. When the issuer has the option not to call the instrument then the contractual maturity date should be used. Indeed, the first call date may be considered as the effective maturity only in circumstances where the incentives to redeem	Noted. See response to comment 370

			does not meet the criteria set out for each Tier. Ordinary shares can be called (bought back) at any time so we think considering the call date as the effective maturity date would put too strong a constraint on hybrid capital instruments compared to ordinary shares.	
909.	GROUPAMA	3.185.	We do not understand why liabilities shorter than 3 years should be excluded from the eligible elements as these are capital elements that might be used to face any one-year event.	CEIOPS welcomes these comments and will reinforce in the final advice the need for these characteristics for all tiers of own funds to ensure that subordination is effective.
910.	Groupe Consultatif	3.185.	Some difficulties in understanding this, certainly "first contractual possibility of repayment" is not the same as "expected duration" or "anticipated duration". In any case trying to match durations to an unlimited future does not seem realistic, instead durations should be analysed in the ORSA and undertakings would have plenty of time take care of their capital needs if capitalisation is working ok for, say, ten years.	Noted.
911.	Munich RE	3.185.	Duration of the capital instrument is defined as the first contractual possibility of repayment….. Duration should be defined as the legal maturity of the instrument, not the first call date. This would be much too early and would have a negative impact on pricing / marketability. For hybrid instruments a call date with a moderate step-up cannot be considered as the effective maturity date. Incentives to redeem (e.g. coupon step-ups) should be allowed in order to increase the marketability of hybrid instruments, as especially institutional investors demand incentives to redeem. One of the reasons why the hybrid Tier 1 market has grown significantly over the last years is that an increasing number of institutional	Noted. Not agreed. This puts pressure on the issuer to retire the instrument.

			investors are allowed to invest in this asset class due to the existence of a step-up. The investor base for these securities are fixed income investors (not equity investors), who are willing to take additional risk for additional yield. Almost all significant fixed income investors include hybrid Tier 1 securities in their investment mandate. The investment mandate of many institutional investors do not permit instruments in "true" perpetual securities. The existence of a step-up in a hybrid Tier 1 transaction allows the portfolio managers to argue that such an investment would fall within their guidelines. We believe that instruments which do not include a redemption incentive at all will no longer be eligible investments for a large number of pension funds, insurance companies, fund managers and asset managers. As a consequence, the reduced demand from the investor base would significantly increase the cost of raising Tier 1 for issuers. In addition, the smaller investor base means that an issuer is dependent on fewer investors resulting in a higher execution risk for capital market transactions. Despite the existence of step-ups, there are many examples of financial institutions that have not called their hybrid capital instruments during the current financial crisis. In addition, CEBS explicitly allows incentives to redeem as e.g. moderate step-ups (the higher of 100 bp and 50% of the initial spread). Therefore the current CEIOPS proposal would not create a level playing field with banks.	
912.	Pearl Group Limited	3.185.	The maturity date used for the calculation of the duration of the instruments should be the contractual maturity date. The duration of the instrument should be based on the contractual possibility of repayment when this is mandatory or can be called upon by the holder of the instrument. When the issuer has the option not to call the instrument then the contractual maturity date	Noted.

			should be used.	
913.	ROAM –	3.185.		
914.	UNESPA (Association of Spanish Insurers)	3.185.	4.	
915.	XL Capital Ltd	3.185.	The duration of the capital instrument is defined as the first contractual possibility of repayment. We believe that the duration of the instrument should be based on the contractual possibility of repayment when this is mandatory, or can be called upon by the holder of the instrument. When the issuer has the option not to call the instrument then the contractual maturity date should be used. We ask CEIOPS to confirm that in the case of partial repayments, if contractually defined, the duration would be considered separately for each separate layer at its own first contractual possibility of repayment.	Noted
916.	Association of British Insurers	3.186.	Also covers 3.187 We agree with the minimum maturities for the various tiers of regulatory capital but disagree with the (tentative) proposal that tier 1 should have a maturity equal to that of the “longest dated insurance liability” of an issuer. If only the longest dated insurance liability of an issuer was taken into account to determine the duration of its liabilities, this duration could be significantly overstated. It would be more relevant to link the duration to the overall profile of the portfolio rather than base it on the longest tail. A cash-flow based assessment would be more accurate and we	Noted. See response to comment 370

			favour this approach.	
917.	BNP PARIBAS	3.186.	We believe there was fundamentally nothing wrong with banking definitions of duration requirements: dated with a minimum of 5 years for Lower Tier 2, perpetual with a minimum of 5 years for both Upper Tier 2 and Tier 1	Noted. See response to comment 370
918.	CEA, ECO-SLV-09-441	3.186.	Provided the direct link with liabilities is removed and that the maturity date is defined as the contractual maturity date, we do agree with the minimum maturity duration proposed for each tier 1 and 2 as an indicator of performance and quality of capital. We would also recommend a minimum maturity before the first call date at issuance should be set at 5 years for Tier 1 and 3 years for Tier 2. However, we do not understand why liabilities shorter than 3 years should be entirely excluded from the eligible elements, as there are eligible capital to face any one-year event.	
919.	CFO	3.186.	If the duration of the liabilities is longer then 10 years the text suggests that 10 years from the issue date, hybrid capital is not eligible. Further clarification of this point is requested. Comments in 3.69 and 3.181 are also relevant here.	Noted. See response to comment 370
920.	CRO Forum	3.186.	We agree with the recommendation of minimum duration per Tier1 and Tier2 (10 years for Tier 1; 5 years for Tier 2) at the issue date. But supervisors may reduce the minimum duration required in case the liabilities of the undertaking are shorter. For Tier3, there should be only the requirement to be available within the 12 month time horizon (minimum residual maturity), but no specific requirement for a minimum duration at issue date.	Noted. See response to comment 370
921.	FFSA	3.186.	We agree with the recommendation	Noted.
922.	German	3.186.	Provided the direct link with liabilities is removed and that the	Noted. See response to comment

	Insurance Association – Gesamtverb and der D		maturity date is defined as the contractual maturity date, we do agree with the minimum maturity duration proposed for each tier 1 and 2 as an indicator of performance and quality of capital. We would also recommend a minimum maturity before the first call date at issuance should be set at 5 years for Tier 1 and 3 years for Tier 2. However, we do not understand why liabilities shorter than 3 years should be entirely excluded from the eligible elements, as there are eligible capital to face any one-year event. A contractual lock-in clause where redemption is only permitted, if the item is replaced by an own fund item of equivalent, i. e. same tier, or higher quality should be also considered in the assessment of sufficient duration, because it ensure that losses are covered as long they persist. A minimum duration for supplementary members call should not be required. Although the underlying contracts will be normally one-year contracts the own fund item supplementary members calls should be not regarded as a dated instrument. Where called-in, there's no legal maturity, i. e. they are undated. See also our comments as regards the approval of ancillary own funds (CP 29): Approval should not be restricted to a maximum of one year.	370
923.	KPMG ELLP	3.186.	See 3.75 and 3.77	Noted
924.	Legal & General Group	3.186.	We understand that the reference for Tier 1 to have a minimum maturity of 10 years, means that this is the earliest point at which the first contractual possibility exists for the insurer to repay investors. We think this restricts market access to a specific class of investors which expect call dates prior to year 10. Retail investors and retail intermediaries have played a crucial role in the development of the market for non-innovative Tier 1. Even	Noted. See response to comment 370

			though some institutional investors have taken positions in non-innovative Tier 1 transactions in the past, the majority of the investors are known to be retail clients. Notwithstanding the fact that the legal maturity of Tier 1 transactions is perpetual, retail investors have a strong preference for issues which include a call date in the area of 5 years. Consequently, there is the risk that retail investors will not engage as actively in transactions where a call date is only after 10 years.	
925.	Munich RE	3.186.	Retail investors and retail intermediaries have played a crucial role in the development of the market for non-innovative Tier 1. Notwithstanding the fact that the legal maturity of Tier 1 transactions is longer dated, retail investors have a strong preference for issues which include a call date in the area of 5 years. Consequently, there is a risk that retail investors will not engage as actively in transactions where a call date is only after 10 years.	Noted. See response to comment 370
926.	Pearl Group Limited	3.186.	We agree with the minimum maturities for the various tiers of regulatory capital but disagree with the (tentative) proposal that tier 1 should have a maturity equal to that of the "longest dated insurance liability" of an issuer. If only the longest dated insurance liability of an issuer was taken into account to determine the duration of its liabilities, this duration could be significantly overstated. It would be more relevant to link the duration to the overall profile of the portfolio rather than base it on the longest tail. A cash-flow based assessment would be more accurate and we favour this approach.	Noted. See response to comment 370
927.	RBSI	3.186.	It seems odd that the minimum maturity is fixed regardless of the nature and projected cashflows of the entity.	Noted. See response to comment 370
928.			Confidential comment deleted	

929.	UBS	3.186.	We understand that the reference for Tier 1 to have a minimum maturity of 10 years, means that this is the earliest point at which the first contractual possibility exists for the insurer to repay investors. We think such a requirement is unnecessary and restricts market access to a specific class of investors which expect call dates prior to year 10: • if it is also proposed that a lock-in feature be included for tier 1 capital, then a delayed call is unnecessary. A lock-in feature (set at the appropriate trigger) ensures that during times of stress investors will not be repaid • Retail investors and retail intermediaries have played a crucial role in the development of the market for non-innovative Tier 1. Even though some institutional investors have taken positions in non-innovative Tier 1 transactions in the past, the majority of the investors are known to be retail clients Notwithstanding the fact that the legal maturity of Tier 1 transactions is perpetual, retail investors have a strong preference for issues which include a call date in the area of 5 years. Consequently, there is the risk that retail investors will not engage as actively in transactions where a call date is only after 10 years, and this will lead to less liquidity for such securities generally. • Minimum tier 1 non-call periods for bank capital is either 5 years where there is no incentive to redeem, or 10 years where there is an incentive to redeem. This inconsistency will clearly contribute to investors being out of favour with investing in insurance tier 1 instruments, and prioritising to bank tier 1 capital.	Noted. See response to comment 370
930.	UNESPA	3.186.	Own Funds objective is to absorb potential loss, not to cover	Noted. See response to comment

	(Association of Spanish Insurers)		liabilities which are supposed to be covered by assets, so we disagree with the relation between liabilities duration and capital duration. We understand that is necessary to assure a guarantee period for the maturity date of capital duration, but considering that the undertakings capacity to generate own funds is between 1-3 year, the CEIOPS proposed period is overstating.	370
931.	AMICE	3.187.	There is no justification for linking the duration of subordinated debt with the longest liability. Instead, the duration of liabilities should be taken into account as part of the Pillar II supervisory review These types of instruments are carried out in an on-going manner, and should not be linked to the longest liability. We suggest the following wording: „So, for Tier 1 the minimum maturity will be ~~either the longest dated insurance liability (tentative) or~~ 10 years, whichever is longer; for Tier 2 it will either be ~~the average weighted maturity of all insurance liabilities (tentative) or~~ 5 years ~~whichever is longer~~ and for Tier 3 it will be 3 years"	Noted. See response to comment 370
932.	Association of British Insurers	3.187.	See comments under 3.186	Noted.
933.	CEA, ECO-SLV-09-441	3.187.	See comments to 3.182, 3.183, 3.185 and 3.186.	Noted.
934.	CFO	3.187.	Comments in 3.69 and 3.181 are also relevant here.	Noted.
935.	CRO Forum	3.187.	See our comment on §3.70 or "key message" in the General Comment part.	Noted. See response to comment 370

			Maturity of capital instrument should not be directly related to the insurer's liabilities	
936.	European Union member firms of Deloitte Touche To	3.187.	Duration of Tier 1 capital instruments The requirement that Tier 1 duration must be at least equal to the duration of the longest dated liability would mean that for long term business contractual liabilities or long tail general insurance liabilities calculated on expected cash flows would be excessive. Insurers underwriting such business are likely to have certain liabilities that have extremely long contractual periods and it would not be appropriate to require Tier 1 capital instruments to have such a long maturity at issue. We suggest that the 10 year limit coupled with a limit based on mean average duration of insurance liabilities, where greater than 10 years, would be appropriate.	Noted. See response to comment 370
937.	FFSA	3.187.	FFSA believes that no link should be done between insurance liabilities duration and subordinated debts duration. The latest are indeed carried out in an on-going view, and should not be linked to current technical provisions.	Noted. See response to comment 370
938.	German Insurance Association – Gesamtverband der D	3.187.	See comments to 3.182, 3.183, 3.185 and 3.186	Noted.
939.	GROUPAMA	3.187.	We do not understand why such a link should be done between insurance liabilities duration and subordinated debt duration. Those kinds of capital element are carried out in an on-going view, and should not be linked to current technical provisions.	Noted. See response to comment 370
940.	Legal &	3.187.	We have concerns about the application of the rules which	Noted. See response to comment

	General Group		contemplate that Tier 1 minimum maturity should be either "the longest dated insurance liability (tentative)" or 10 years and for Tier 2 it will be either "the average weight maturity of all insurance liabilities (tentative)" or 5 years: i) it could potentially result in smaller insurance groups seeking to minimise long tail insurance business, as the cost of capital to be held could be much higher (ie. requires capital with longer tenor) ii) capital, once issued, is not dynamic in the sense that its features cannot be changed; accordingly, one further issue is where an insurance group decides to write new lines of longer tail business or closes short dated lines of business, and the tenor of the capital is then "too short" relative to its liabilities. The Insurance group could still be adequately capitalised; would this mean the group will have to raise longer dated, and unnecessary surplus capital? iii) investors preference is to have predictable and comparable maturity profiles, not a multitude of different maturity profiles. Add to this that longer maturity profiles evidence greater risk in the underlying business that claims may be made, so this will add materially greater cost to the capital being sought iv) if an insurance group's liability profile is constant over a number of years, then under this approach it will be required to issue capital with at least the same tenor over that time, and it is worthwhile for institutions seeking capital to have the ability to issue on the basis of investor demand for certain tenors, rather than a standard tenor.	370
941.	Munich RE	3.187.	Maturity should not be linked directly to the duration of insurance liabilities. [=> goes beyond the Directive] Capital, once issued, is not dynamic in the sense that its features can be changed; accordingly it may be problematic, where an	Noted. See response to comment 370

			insurance group decides to write new lines of longer tail business or closes short dated lines of business , and the tenor of the capital than is "too short" relative to its liabilities. In addition, investors preference is to have predictable and comparable maturity profiles, not a multitude of different maturity profiles.	
942.	Pearl Group Limited	3.187.	See comments under 3.186	Noted
943.	RBSI	3.187.	This is too strong (see the response to 3.183 above).	Noted. See response to comment 370
944.	ROAM –	3.187.	There is no justification to link the insurance liabilities and the subordinated debt duration. These kinds of capital elements are carried out in an on-going manner, and should not be linked to current technical provisions.	Noted. See response to comment 370
945.	UBS	3.187.	We have concerns about the application of the rules which contemplate that Tier 1 minimum maturity should be either "the longest dated insurance liability (tentative)" or 10 years and for Tier 2 it will be either "the average weight maturity of all insurance liabilities (tentative)" or 5 years: it could potentially result in smaller insurance groups seeking to minimise long tail insurance business, as the cost of capital to be held could be much higher (ie. requires capital with longer tenor) life insurance companies have typically long liabilities so such a business will have a competitive disadvantage to P&C insurance companies, merely due to the tenor of their liabilities. Additionally, an insurance company with minority or negligible amount of long term liabilities, will be forced to match capital to that tenor, when the vast majority of its business could entail short	Noted. See response to comment 370

			term liabilities. capital, once issued, is not dynamic in the sense that its features can be changed; accordingly, one uncertainty is what happens where an insurance group decides to write new lines of longer tail business or closes short dated lines of business, and the tenor of the capital is then “too short” relative to its liabilities. The Insurance group could still be adequately capitalised; would this mean the group will have to raise longer dated, and unnecessary surplus capital ? investors preference is to have predictable and comparable maturity profiles, not a multitude of different maturity profiles. Add to this that longer maturity profiles evidence greater risk in the underlying business that claims may be made, so this will add materially greater cost to the capital being sought if an insurance group’s liability tenor is constant over a number of years, then under this approach it will be obliged to issue capital with the same tenor over that time; it is worthwhile for institutions seeking capital to have the ability to issue on the basis of investor demand for certain tenor, rather than a standard tenor, regularly.	
946.	XL Capital Ltd	3.187.	We do not agree that for Tier 1 the minimum maturity should be either the “longest dated insurance liability or 10 years, whichever is longer”. The longest dated insurance liability could be significantly longer than the average maturity and hence duration this approach may overstated the duration. Duration should be assessed in relation to the overall profile of the portfolio rather than base it on the longest tail.	Noted. See response to comment 370
947.	CEA,	3.188.	See comments to 3.182, 3.183, 3.185 and 3.186.	Noted.

	ECO-SLV-09-441			
948.	CFO	3.188.	Comments in 3.181 are also relevant here.	Noted.
949.	FFSA	3.188.	In case of used average durations of liabilities, there should not be a minimum threshold or a requirement for a pre-approval from Supervisor.	Noted. See response to comment 370
950.	German Insurance Association – Gesamtverband der D	3.188.	See comments to 3.182, 3.183, 3.185 and 3.186	Noted.
951.	International Underwriting Association of London	3.188.	We welcome that undertakings that have insurance liabilities with a duration of significantly less than 10 years, are able to request supervisory approval for instruments of a shorter maturity. This would be of benefit to those companies writing short tail business, such as property business. However, we believe that the application for such approval should not unduly onerous. Furthermore we would appreciate clarification on whether this wording implies that each instrument would need to be approved individually.	Noted.
952.	KPMG ELLP	3.188.	See 3.75	Noted.
953.	RBSI	3.188.	Agreed.	Noted.
954.			Confidential comment deleted	
955.	CEA, ECO-SLV-09-441	3.189.	12. See comments to 3.182, 3.183, 3.185 and 3.186.	Noted

956.	CFO	3.189.	Comments in 3.181 are also relevant here.	Noted
957.	CRO Forum	3.189.	See our comment on §3.70 or "key message" in the General Comment part. Maturity of capital instrument should not be directly related to the insurer's liabilities	Noted. See response to comment 370
958.	German Insurance Association – Gesamtverband der D	3.189.	See comments to 3.182, 3.183, 3.185 and 3.186	Noted
959.	KPMG ELLP	3.189.	See 3.78	Noted
960.	RBSI	3.189.	This appears reasonable subject to allowance for grandfathering.	Noted
961.	XL Capital Ltd	3.189.	"The average duration of own fund items should not be significantly lower than the average duration of an undertaking's liabilities." We believe that the own funds considered for this duration benchmarking should be limited to those actually used in the limits of the SCR. We would not wish to publicly disclose an analysis of duration of liabilities because this could be commercially sensitive.	Noted
962.	Association of British Insurers	3.190.	See comments under 3.170	Noted
963.			Confidential comment deleted	
964.	BNP PARIBAS	3.190.	The characteristics of a hybrid instrument should not be overly onerous. A Tier 1 hybrid complements an issuer's traditional equity	Not agreed. CEIOPS recognises that there may be a role for high quality hybrids in Tier 1, provided

			base and in order to retain a deep and liquid investor base, the instrument should provide for a preferential right of return and ranking compared to ordinary shares. o A write-down is not effective, does not increase the capital base of an issuer, and creates a taxable profit in many European countries o While an equity conversion feature would render a hybrid capital instrument more equity-like, it would not improve the status of policyholders o Mandatory conversion into ordinary shares may prove counter-productive forcing financial institutions into a cul-de-sac at a time when flexibility is most needed and when decisions should be made on a case-by-case basis. Furthermore, a large new class of ordinary shareholders may be off-putting to anyone seeking to recapitalise the issuer. o A fundamental underpinning of the global Tier 1 hybrid capital markets is that hybrid capital instruments are, or are the functional equivalent of, perpetual, non-cumulative preference shares. As such, they rank senior to ordinary shares on an ongoing basis and in liquidation. An equity conversion feature would violate this basic tenet because hybrid capital instrument holders and ordinary shareholders would rank equally in liquidation. Most fixed income investors which provide the backbone of the market are actually prevented from buying securities with no fixed face value. As a result, the size of the market likely would decline and the cost of issuing hybrid capital instruments likely would rise to compensate investors for greater subordination risk Definition of c. should be clarified. Any loss is first and foremost absorbed by equity. It's only when equity has been exhausted that other – often debt-instruments start to absorb losses. No debt	that in stressed situations, they convert or write down to provide higher quality capital in the form of equity. However, CEIOPS cannot support any regime in which hybrid instruments could represent all or the most significant part of Tier 1. Any inclusion of high quality hybrids in Tier 1 should therefore be restricted i.e. they should account for no more than [20/30%] of Tier 1. As stated in CP46 CEIOPS continues to see an inherent trade-off between the requirements for the quality of own funds eligible to cover capital requirements and the limit structure applicable to the tiers to which those own funds are allocated. Therefore, it is not proposed that the limit for Tier 1 be lowered below 50% or the characteristics for hybrids be weakened i.e. they should continue to be required to absorb losses first or rank *pari passu*, in going concern, with capital instruments that absorb losses first.

			instrument can "absorb losses first". The suggested trigger on a breach of Solvency Capital Requirement – which is significantly higher than the MCR and also current capital requirements – seems unrealistic. If a trigger point is needed, we believe the MCR is more suitable.	
965.	CEA, ECO-SLV-09-441	3.190.	See comments to 3.170.	Noted
966.	CFO	3.190.	The value of in-force ("VIF") should be treated as Tier 1 capital. These proposals appear to put the value of in-force ("VIF") in Tier 2 – for QIS 4 it was in Tier 1. The VIF is a kin to retained earnings so should be treated as Tier 1 capital. Generally hybrid capital instruments should be classified as Tier 1 capital, depending on its terms and conditions. The word "potentially" should be removed as hybrid capital should be part of Tier 1 otherwise insurance companies would be at a significant disadvantage to the banking sector. Level 1 text accepts hybrid instruments as part of Tier 1 and we recommend that this treatment is maintained. Comments in 3.33, 3.170 and 3.195 are also relevant here.	Noted
967.			Confidential comment deleted	
968.	European Union member firms of Deloitte Touche To	3.190.	Loss absorbency of Tier 1 capital instruments We make reference to our comment on para. 3.170.	Noted

969.	FFSA	3.190.	The sentence could be re-written "instruments subject to write down as long as losses persist or equivalent mechanisms at the discretion of the supervisor".	Noted
970.	German Insurance Association – Gesamtverb and der D	3.190.	See comments to 3.170	Noted
971.	Groupe Consultatif	3.190.	When looking at this one should also remember Recital 29a stating that "the vast majority of the excess of assets over liabilities…should be treated as high quality capital (Tier 1)"	Noted
972.	KPMG ELLP	3.190.	We agree with the items in this list although we note that it might be useful to establish a definition of a 'capital instrument' so that insurers are able to work against a clear definition in forming their own capital management processes and review procedures	Noted
973.	Legal & General Group	3.190.	The requirements for Tier 1 own funds to meet certain criteria are too stringent and should be used as a guide in the classification. Write down provisions There are a number of European jurisdictions where write-down features are already included in hybrid Tier 1 securities. The concept is therefore not new to fixed income investors and they do understand that such a mechanism will provide an issuer with the financial flexibility to absorb losses in times of financial distress. The types of write down provisions vary significantly across Europe, and the key aspects for CEIOPS to focus on to develop consistency are: • at which trigger point a write down occurs,	Not agreed. See response to comment 964

			• whether it occurs pro rata with common equity (or after all common equity and reserves have been written down), and • ensure there is a write up of the principal upon financial recovery (to be defined) of the Insurance group. Typically write-down provisions are temporary and permit a write-up of principal when the issuer has restored solvency and/or has realised a balance sheet gain. This allows investors to recover their investment when the issuer recovers from financial distress. Such write-downs are also usually reversed on liquidation such that the hybrid Tier 1 security maintains its ranking ahead of equity. That is, write-down typically only impacts the nominal value of a claim that investors may have, not their ranking or subordination. In the situation of a permanent write-down of principal, fixed income investors are theoretically subordinated to equity investors who would subsequently be able to participate in future profits through share price appreciation following a capital reduction. Such a feature would significantly increase the cost of raising hybrid Tier 1 for issuers resulting in increased interest payments and lower profitability. Also, institutions with a weaker capitalisation (who would need the Tier 1 capital the most) would have to pay an even higher premium in order to compensate investors for the technical subordination mentioned above. In the worst case, some investors would not be willing to invest in Tier 1 securities of weaker institutions at all. Conversion Conversion or exchange into a higher form of capital is also a means to address loss absorption on a going concern basis for insurers in financial distress.	

			The key aspects to focus on to develop consistency are: • at which trigger point a conversion / exchange occurs, and • why conversion / exchange into preference shares / profit sharing certificates / higher form of Tier 1 (other than common equity), does not adequately cater for loss absorbency in the Insurer's financial distress. Conversion / exchange into common equity addresses the subordination point above, but will result in increased equity optionality embedded in hybrid Tier 1 securities. This has two potential consequences. First, typically as the investment mandate for fixed income real money investors does not permit investment into common equity (or securities that could convert / exchange into common equity), such investors may be restricted from participating in such transactions until (and if) their investment mandate is amended (or, at best, would be forced sellers at that time). Secondly, whilst investment appetite for real money investors may be diminished, there is likely to be increased demand from hedge funds seeking equity optionality. Consequently, we fear that we will see an unwanted shift in the investor base for such hybrid Tier 1 transactions – a shift from real money investors towards trading-oriented investors resulting in more market volatility caused by increased trading activities.	
974.	Moody's Investors Service	3.190.	In Moody's view, the hybrid characteristics described here are consistent with substantial equity credit using our own methodology. In particular, the lack of incentives to redeem, the non-cumulative fully optional coupon payments, and the deepest subordination score highly under Moody's hybrid criteria.	Noted.
975.	Munich RE	3.190.	Potentially should be deleted , as hybrid capital has to be part of Tier 1; otherwise insurance companies would have a huge	See response to comment 964

			disadvantage compared to banks (subordinated capital = part of Tier 1); the Directive also accepts hybrid instruments as part of Tier 1. absorb losses first or rank pari passu (=> see also comments 3.170): Any loss is first and foremost absorbed by equity. It´s only when equity has been exhausted that other, often debt-instruments start to absorb losses. No debt instrument can “absorb losses first”. Other means of absorbing losses (e.g. interest deferral) should be sufficient (=> see comments 3.170) Trigger Point (=> see comments 3.170) The suggested trigger on breach of the SCR – which is significantly higher than the MCR – seems unrealistic. The MCR would be more suitable.	Not agreed. Against L1 text and against supervisory ladder of intervention
976.	Pearl Group Limited	3.190.	The definition of what items fall into Category 1 own funds is more restrictive than those used for QIS 4. The definitions that were used in QIS 4 were appropriate and worked well. Pearl proposes that CEIOPS reverts to the QIS 4 definitions.	See response to comment 964
977.	UBS	3.190.	Write down provisions There are a number of European jurisdictions where write-down features are already included in hybrid Tier 1 securities. The concept is therefore not new to fixed income investors and they do understand that such a mechanism will provide an issuer with the	See response to comment 964

			financial flexibility to absorb losses in times of financial distress. The types of write down provisions vary significantly across Europe, and the key aspects for CEIOPS to focus on and develop are: ♦ at which trigger point a write down occurs, ♦ whether it occurs pro rata with common equity (or after all common equity and reserves have been written down), and ♦ ensure there is a write up of the principal upon financial recovery (to be defined) of the Insurance group or redemption of the security Typically write-down provisions are temporary and permit a write-up of principal when the issuer has restored solvency and/or has realised a balance sheet gain, and upon redemption. This allows investors to recover their investment when the issuer recovers from financial distress. Permanent write downs feature in very few jurisdictions (Denmark and Norway) and in those situations, it is only after a complete write off of share capital and reserves that such a write down of hybrid Tier 1 can occur. This type of provision does preserve the relationship between hybrid holders and common equity, but nevertheless has a marketing impact. In the situation of a permanent write-down of principal, fixed income investors are theoretically subordinated to equity investors who would subsequently be able to participate in future profits through share price appreciation following a capital reduction. We have spoken with a number of investors about this concept and their feedback has been that the inclusion of a permanent write-down feature will a) require a considerable coupon premium to a hybrid Tier 1 without such a feature, and b) the underlying credit	

			worthiness of the institution will be far more closely scrutinised. One investor even mentioned that when a security can be written down permanently he would only consider buying hybrid Tier 1 securities of the most strongly capitalised institutions. In summary, such a feature would significantly increase the cost of raising hybrid Tier 1 for issuers resulting in increased interest payments and lower profitability. Also, institutions with a weaker capitalisation (who would need the Tier 1 capital the most) would have to pay an even higher premium in order to compensate investors for the technical subordination mentioned above. In the worst case, some investors would not be willing to invest in Tier 1 securities of weaker institutions at all. Conversion into ordinary share capital Conversion or exchange into a higher form of capital is also a means to address loss absorption on a going concern basis for insurers in financial distress. Currently in Europe types of conversion / exchange features vary, and the key aspects to focus on to develop consistency are: ♦ at which trigger point a conversion / exchange occurs ♦ whether conversion / exchange into preference shares / profit sharing certificates / higher form of Tier 1 (other than common equity), can adequately cater for loss absorbency in the Insurer's financial distress, and ♦how is the conversion price calculated, and are there floors on the lowest conversion price. To ensure there is no "death spiral" Conversion / exchange into common equity addresses the subordination point above, but will result in increased equity optionality embedded in hybrid Tier 1 securities. This has two potential consequences. First, typically as the investment mandate	

			for fixed income real money investors does not permit investment into common equity (or securities that could convert / exchange into common equity), such investors may be restricted from participating in such transactions until (and if) their investment mandate is amended (or, at best, would be forced sellers at that time). Secondly, whilst investment appetite for real money investors may be diminished, there is likely to be increased demand from hedge funds seeking equity optionality. Consequently, we fear that we will see an unwanted shift in the investor base for such hybrid Tier 1 transactions – a shift from real money investors towards trading-oriented investors resulting in more market volatility caused by increased trading activities.	
978.	XL Capital Ltd	3.190.	The list of the capital instruments included in Tier 1 Basic Own funds puts strict conditions to the inclusion of other paid in capital instruments including preference shares by addressing those which automatically convert to ordinary share capital as and when the undertaking needs to absorb losses and those subject to write down. Such a provision would exclude preference shares which would not give right to any preferred dividend as long as the undertaking is in a loss position, but which keeps its preference shares as such and book the losses as negative retained earnings up to the time the accumulated net income of later financial years bring retained earnings back to a positive position.. In our view Own Funds are of equal amount in both cases and the difference in treatment is not justified. More generally speaking, by being too specific on topics which are largely driven by local company laws CEIOPS will make the level 3 implementing measures difficult to define and create a risk of distortion between member states that will not be prepared to change their company laws just for the needs of the insurance industry.	See response to comment 964

979.	AMICE	3.191.	CEIOPS writes in Section XVII that at all times coupons/dividends must be able to be cancelled and must at a minimum be cancelled on a breach of the SCR, after which they can only be paid in exceptional circumstances and subject to the consent of the supervisory authority. - AMICE members wonder whether coupon payment require supervisory approval when the entity restores its solvency position; - AMICE members have strong concerns regarding CEIOPS proposal on "net financing": Investment in equities or bonds should not be covered by the net financing approach and should be limited to loan agreements; - More clarification is needed about the reason for limiting coupons/dividends with fixed rate. We agree that items with unchangeable coupons should not be classified as Tier 1. However, we disagree with CEIOPS proposal to exclude fixed rate subordinated debt from Tier 1. We do not see any reason not to accept fixed rated debt instruments. We suggest therefore the alternative wording for this paragraph: - "Undertakings should have full discretion over the amount of payment coupons/dividends must not be at a fixed rate and there there should be no preference as to income or return of capital."	Noted.
980.	Association of British Insurers	3.191.	For Tier 1 to comply with this requirement it would require further subordination which is too restrictive and closes the market for Tier 1 issuances. Most fixed income investors are prevented from investing in instruments which do not have a liquidation preference to ordinary shares. Lower ranking removes the bond floor and would make Tier 1 holders pari passu with equity holders.	See response to comment 964

			Subordination This requirement is not in line with the Framework Directive where subordination is only required with respect to all other obligations, including insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts. There is no requirement to rank the degrees of subordination between Tiers as there is no effective implication on the degree of protection for policyholders to the extent that only liabilities that are subordinated to policyholders' interests in a winding up situation are considered for own funds classification in the first place. Redraft: the definition used for Tier 2 should be used for Tier 1: "the item ~~must~~ should be ~~the most deeply~~ subordinated in a winding-up". Loss absorbency See comments under 3.170 There should not be any de facto restriction on how undertakings absorb losses as it should be left to undertakings to decide how losses should be absorbed in particular on a going concern basis. It may be that under the supervisory ladder of intervention the undertaking would have to submit a plan on how it would restore the situation. Which items would absorb losses first would then be part of that plan which would depend and be tailored to best meet the needs of each situation. If adopted as they currently stand, the proposals will make hybrids unplaceable with traditional fixed income investors, thereby reducing the range of potential holders of insurance capital instruments.	

			Redraft: "the item must be fully paid in, must ~~be the first instrument to absorb losses or rank pari passu with an instrument that absorbs first losses~~ meet the fully loss-absorbing criteria to substantial degree and must not hinder recapitalisation on a going concern." Sufficient duration See comments under 3.182. Free from requirements or incentives to redeem This ignores the value of and flexibility provided by short first call dates which do not coincide with step-ups or market expectations of redemption. Such a call option has considerable value for the issuer, both because of the option value and because of the flexibility it provides. Arbitrary limits to the step and possible extension to maturities limits the markets appetite for these capital instruments. A first call date without step-up or reputational impact of not being exercised is found frequently in retail targeted instruments, and the behaviour of issuers on the first call dates of those instruments has demonstrated clearly that they are making use of the flexibility and will call or not call only depending on their own requirements. Free from mandatory fixed charges This is slightly unclear. It requires coupon deferral for "an indefinite term" which could have several meanings. Furthermore, we do not agree with the proposal that deferred coupons/dividends should only be paid "subject to the consent of the supervisory authority". We consider it unnecessary to make the repayment of dated capital instruments dependent on regulatory approval, provided the issuer is solvent and meets its regulatory capital requirements. The same	

			applies to deferred interest. If coupons can be cancelled they will adopt loss absorbency features, making the instruments unsuitable for traditional fixed income investors. We note that (unlike QIS4) CP46 does not make any reference to ACSM as a means of conserving cash. We view ACSMs as very useful stressed situations and think that they should be acknowledged as a means of achieving a non-cash-cumulative instrument. Absence of encumbrances We agree that a capital instrument must be free from encumbrances. However, we believe that coupon pushers should be allowed as long as the insurer does not face a breach of the SCR, in which case it would be potentially neutralised by the supervisor. On breach of the MCR or its Group equivalent, the neutralisation of the coupon pushers would be automatic. We consider that the so called “dividend pusher” has to be allowed because a company can decided NOT to pay dividend also for strategic reasons, not only because it is in insolvency situation. Therefore if the dividend is not OPTIONALLY paid the hybrid coupons CAN be paid (there is in any case the optional defer clause that can be activated); on the contrary if the hybrid coupons are not paid, the dividend cannot be paid.	
981.	ASSOCIATION OF FRIENDLY SOCIETIES	3.191.	See our comments under 3.85. The rule should be “freely accessible to the firm in the circumstances of the 1:200 stress on a going concern basis and without let or hindrance”	Noted.
982.			Confidential comment deleted	

983.	BNP PARIBAS	3.191.	xiv: Loss Absorbency: no debt instrument can be "first instrument to absorb losses". The definition of "loss absorption" is a key issue because the CEIOPS advice doe not give a detailed analysis of (i) what is required under loss absorption and (ii) how this in practice helps support the insurance company. Experience drawn from the banking world suggests that perpetual, non cumulative instruments have no cash flow drain on the issuer. As such they are a free resource that allows the bank to operate as a going concern at times of stress. Based on the definition in 3.193, we believe that the above banking example does meet all the stated requirements. xv: We fundamentally believe that one of the features of capital is its long term availability. Having perpetual instruments in banks is sound because they do not expose banks to refinancing risk to the same extent as dated instruments. xvi: in conjunction with the point xv, we would strongly suggest CEIOPS to re-evaluate their proposal and allow a moderate incentive to redeem while requiring longer instrument duration as explained above. The banking framework provides for a moderate incentive to redeem, defined as the greater of 100bp or 50% of the initial credit spread. While we recognise that some of the most equity-like instruments should not have step-up, we believe that so-called "innovative" Tier 1 instruments are fundamentally sound. There are many examples of financial institutions that have not called their hybrid capital instruments during the current financial crisis despite the presence of incentives to redeem. These financial institutions include Deutsche Bank, KBC (on Tier 1 instruments) and Glitnir, Sabadell, Anglo Irish, Banco Espanol, Kaupthing, Caja Madrid (on Tier 2 instruments). In the insurance world, Fortis, Groupama, SCOR and Swiss Life also have not called some of their hybrid	See response to comment 964

			capital securities. xvii: Fixed income investors require a fixed rate – or a definable rate such as a floating rate – on their investments and hence the majority of hybrid capital coupon payments. This is also typical of insurance companies, a key investor base for hybrid securities. The proposed requirement has no precedent in the financial markets and appears to be non-viable. Although issuers have full discretion on their hybrid payments, payment discipline must be maintained in relation to other instruments within an issuer's capital structure. This is usually provided for by reference to payments on the issuer's ordinary shares. In certain jurisdictions, a "Dividend Stopper" is utilised payments are prevented on the issuer's ordinary shares following non-payment on hybrid instruments. However, in a number of jurisdictions preventing payments on ordinary shares is not legally enforceable and instead a "Dividend Pusher" is used. Under this mechanism, if payments have previously been made on ordinary shares, payments are compulsory on the hybrid securities. Both forms of payment discipline should be permitted to ensure marketability to investors. Investors are used to mandatory deferral in case of breach of relevant triggers (MCR) or regulatory intervention.	
984.	CEA, ECO-SLV-09-441	3.191.	Subordination This requirement is not in line with the Framework Directive where subordination is only required with respect to all other obligations, including insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts. There is no requirement to rank the degrees of subordination between Tiers as there is no effective consequence on the degree of protection for policyholders to the extent that only liabilities that are subordinated to policyholders' interests in a winding up situation are considered for own funds classification in	See response to comment 964

			the first place. Redraft: the definition used for Tier 2 should be used for Tier 1: "the item ~~must~~ should be ~~the most deeply~~ subordinated in a winding-up". Loss absorbency As explained as part of our comments to 3.170, the requirement to absorb losses first and rank pari passu with shareholders capital is not in line with the Level 1 text which only requires subordination to policyholders' claims and to other senior investors. Furthermore, there should not be any de facto restriction on how undertakings absorb losses as it should be left to undertakings to decide how losses should be absorbed in particular on a going concern basis. It may be that under the supervisory ladder of intervention the undertaking would have to submit a plan on how it would restore the situation. Which items would absorb losses first would then be part of that plan which would depend and be tailored to best meet the needs of each situation. Redraft: "the item must be fully paid in, must ~~be the first instrument to absorb losses or rank pari passu with an instrument that absorbs first losses~~ meet the full absorption criteria to substantial degree and must not hinder recapitalisation on a going concern." Sufficient duration We do not agree with developing implementing measures on the link of liabilities duration with capital instruments duration for the reasons explained in 3.182. Furthermore, we note that it is required that any redemption should be subject to the approval of the supervisory. We have strong concerns of how this would work in practice when the capital	

			instrument has a legal maturity, or a call date. In particular, we do not understand why redemptions which have been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-approval. Free from requirements or incentives to redeem Step-ups should not change the classification of an element of capital among Tiers for the following reasons: • The call is optional, not compulsory, so the issuer still keeps the flexibility to redeem or not the bond at the call date. Under ongoing conditions, the issuer would exercise its call option only if market conditions allow him to refinance itself at a lower cost* than the new stepped-up coupon. Under stressed conditions, it is very likely that refinancing conditions will be more expensive for the issuer than the legal step-up coupon, so it is very likely that the bond will not be redeemed. • The order of magnitude of step-ups (usually from 100-150bp) is lower than the market moves it has been observe in the interest rate markets over several years. In other words, step-ups do not encourage the issuer to redeem more than a fixed-rate coupon without step-up would do in a declining interest rates environment, nor than a floating-rate coupon without step-up would do in a rising interest rates environment. • When faced with the recent stress market conditions certain insurers have not called their transactions despite the presence of step-ups. Instead, step ups greatly increase the marketability of the instrument without reducing the efficiency of the instrument when needed as the recent examples have shown. The increase of spread by the market	

			on these tools reflect the risk that the investor runs for the "extension risk" (not exercise of call option by Issuer) • Redraft allowing step-ups with criteria (similar to banking sector): - step-up do not exceed the maximum between 100bp and half of the spread at issue; and - step-up do not occur earlier than 10 years after the issue date. Free from mandatory fixed charges The requirement of "no fixed rate" for coupons deviates significantly from current Tier 1 instruments characteristics where investors expect to receive a predefined coupon stream as long as ordinary dividends are being paid and no breach of the regulatory capital requirement has occurred. It is unclear whether the intention here is to restrict Tier 1 to variable rate debt instruments or whether only instruments where coupons are unchangeable should be excluded. In any case, the "no fixed rates" requirement should not be a pre-requisite for Tier 1. In particular, when instruments possess other equally strong or even stronger loss absorption features such as deferral or cancellation of coupons, this requirement does not make any sense. On the other hand, an income-related coupon is likely to have a negative impact on the tax deductibility of coupons in some jurisdictions. We are strongly concerned that the decision of whether or not to pay a coupon/dividend on hybrid instruments is based on supervisors' assessment of the solvency and financial situation of institution. We doubt that investors accept clauses which state that payments are cancelled "as and when the undertaking needs to absorb losses" even if the SCR is not breached.	

			The trigger point for the automatic cancellation of payments should be the MCR (See comments to 3.170) otherwise the instruments may become unattractive to investors and too expensive for undertakings and their policyholders. In case the breach is corrected, the undertaking should not have to ask for an approval to start paying coupons/dividends again. Payments through alternative cash settlement mechanisms must be allowed. One of the characteristics which needs to be met in order to be eligible for Tier 1 or Tier 2 is the absence of mandatory fixed charges requirement. We agree in principle, but the key characteristic should be that alternative payments can replace cash payments as this ensures that during distressed periods the funds available to protect policyholders are not reduced. These alternative payments should not be limited to stock only as most bond investors cannot invest in equity and therefore this could prevent many fixed income investors from participating in the market of hybrids. Alternative payments through alternative cash settlement mechanisms (ACSM) must be allowed, such as: • Proceeds raised through the issuance of Parity or junior securities (issue of new Tier 1 instrument of the same kind or new shares of the Issuer/Guarantor) or • Payment in kind (increase of the principal) which do not affect policyholder protection (because they are subordinated and do not result in cash exiting the company) This “ACSM” mechanism has to be considered, as considered by Rating Agencies and Market, as NON CUMULATIVE, because the flows from the payment do not impact the cash of the company, because the source is new capital. Absence of encumbrances	

			We believe that coupon pushers shall be allowed as long as the insurer does not face a breach of the SCR, in which case it would be potentially neutralised by the supervisor. On breach of the MCR or its Group equivalent, the neutralisation of the coupon pushers would be automatic. We consider that the so called "dividend pusher" has to be allowed because a company can decided NOT to pay dividend also for strategic reasons, not only because it is in insolvency situation. Therefore if the dividend is not OPTIONALLY paid the hybrid coupons CAN be paid (there is in any case the optional defer clause that can be activated); on the contrary if the hybrid coupons are not paid, the dividend cannot be paid. We want to ensure of the meaning of "financing" in this sentence, and verify under which circumstances this net financing would be considered. In no case, it should cover investment by the undertaking in equity or bonds (or other capital instruments) of the investor. This would be an adverse change compared to current situation. One has to bear in mind that for insurance companies, investments are backing mainly technical liabilities, which cannot be comparable to the banking sector's liability side of the balance sheet. Furthermore, insurers may own minority participation in banks that grant loans to or buy securities from the insurer at arms' length. Only very specific transactions and cases shall be included here. * footnote: The term "lower cost" refers not only to an immediate benefit due to a more advantageous cost of refinancing, but it has to be seen in a wider view considering the overall company liabilities management. From this point of view an expiring debt could be refinanced at a higher cost in order not to compromise the economic impact of the other bonds issued and on the market, the	

			economic impact of company share, and the spread level of future issuances. In other words reputational considerations have to be taken into account. Under stressed conditions, it is very likely that reputional risk would be less considered in deciding if to redeem a bond at a higher cost or not.	
985.	CFO	3.191.	A less restrictive basis for Tier 1 capital should be established. Tier 1 issued debt should be longer dated than the longest liabilities; however, such liabilities would not be attractive to investors and could not be sold. Whilst there clearly should be a link between the maturity of own funds and the duration of the insurance liabilities, as required by the Directive, it is not necessary for all Tier 1 debt to be longer dated than the longest insurance liabilities. A less restrictive basis for Tier 1 capital should be established based on the overall profile of liability durations and the overall profile of maturities of issued debts and equity such that the level of own funds would remain satisfactory over the run-off of the liabilities. Contradictions within the paper should be resolved. 3.182 interprets the duration to mean the remaining maturity whereas 3.191 talks about a sufficient duration, i.e. a legal maturity of more than 10 years at issue date. This inconsistency should be removed. 3.191 requires that any redemption should be subject to the approval of the supervisor. It is not clear how this approval process fits in when the capital instrument has a legal maturity. Further clarification is required. Alternative Coupon Settlement (ACSM) is not referenced. Clarification of their treatment should be added.	See response to comment 964

			ACSM is not mentioned in 3.191. According to current market standards, ACSM should be allowed, as this mechanism would be important to attract hybrid capital investors. Therefore, the current proposal does not allow a level playing field with banks. The mechanism of a "dividend pusher" has to be allowed because a Company can, for strategic reasons stop the payments of dividends, but this does not necessarily mean that a Company is having difficultly meeting its SCR or MCR. Provided that a Company is not in breach of its Solvency position it has discretion over the payment of dividends to hybrid holders within the terms of the instrument. Comments in 3.33, 3.98, 3.170, 3.85 and 3.190 are also relevant here.	
986.			Confidential comment deleted	
987.	CRO Forum	3.191.	We note that the 6 criteria for Tier 1 eligibility are far more restrictive than currently written in the Directive. As currently written in this CP, essentially only ordinary shares will qualify as Tier 1. The idea that Tier1 capital instruments must behave like an ordinary share in a normal situation and rank equally with shares in liquidation is misplaced. We believe the focus shall be on "stressed situation" where the capital falls below the SCR as the reference point for supervisory intervention. 3.191 xiv Loss absorbency – we assume losses are defined in market value term, not in book-value terms. On 3.191 xv Sufficient duration – we refer to our prior comments (§3.70 or "key message" in the General Comment part) on sufficient duration.	See response to comment 964

			On 3.191 xvi Free from requirements or incentives to redeem: an incentive to call should not change the classification of an element of capital among tiers: the call is optional and the magnitude of step ups may be lower than credit spreads. The current stance may lead to very long-dated hybrids (e.g. if the longest liability is a perpetual liability). There is only a very small market for long-dated instruments without incentives to redeem. Recently, issuers have not called their step up instruments. Issuers will only do this when they would be able to refinance themselves efficiently or if sufficient capital and liquidity is available, but this decision is not driven by the step up. On 3.191 xvii Free from mandatory fixed charges – we agree that "at all times coupons/dividends must be able to be cancelled", however automatic activation of the instrument loss absorbency and cash flow protection mechanisms should only occur when the undertaking is in breach of the MCR and not breach of SCR. We believe that is sufficient and we do not understand the additional requirements as stipulated in the last sentence – i.e. whether it is fixed rate or not; whether full discretion over the amount of payment; whether there is preference as to income of return on capital is not important in our view as long as the payments can be cancelled as needed. We hardly understand how this could cover anything other than dividends on ordinary shares – essentially restricting T1 to ordinary shares. On 3.191xviii Absence of encumbrances: We believe that Tier 1 capital is more a capital that is needed in case of going concern – as also mentioned in the paper (e.g. in § 3.150). As a result, we believe there is a need to more clearly this paragraph. In particular, clarity is required on the concept of "net financing", where only funds received from a party A minus funding provided to that same party A) is considered as eligible own funds. In particular,	

			precisions on the investment in capital instrument to be covered by this "net financing approach". We view it also as imperative that there is a differentiation between the solo and group view. The concept of net financing must not extend to intra-group funding exercises. In addition, we question the absence of a differentiation between regulatory own funds on the one hand (e.g. capital provided by party A) and senior debt (funding provided to party A) on the other hand We note also that (unlike QIS4) CP46 does not make any reference to ACSM as a means of conserving cash. It is unclear whether this omission is intentional. We view ACSMs as very useful in cash-constrained situations and think that they should be acknowledged as a means of achieving a non-cash-cumulative instrument.	
988.	European Union member firms of Deloitte Touche To	3.191.	Loss absorbency of tier 1 capital instruments Para xiv: We make reference to our comment on para. 3.170.	Noted.
989.	FFSA	3.191.	As a general comment, we do not support the treatment of subordinated debt as conditions exposed should lead to a very high cost for insurance companies and may reduce a lot the source of funding. For example, the cost for non dated debts will be much more expensive. Besides, the conditions will reduce a lot the classification in tier 1 of such debts, as far as we understand, concerning the "no fixed rate" concept. Please could you explain into more details this concept? We support anyway a lot the grandfathering clause for existing debt (as in bank sector). Subordination We disagree with this requirement to include the deepest	See response to comment 964

			subordination of the instrument on liquidation. In liquidation, as opposed to on a going concern, this requirement would not improve policyholders and reinsurance contract holders' recoveries. We would recommend using "the item must be subordinated to all insurance policyholders, reinsurance contracts and unsecured creditors" Loss absorbency We disagree with the notion of first to absorb losses. We would recommend the following wording. The item must be fully paid in, must be able to absorb losses when the SCR is breached and upon request from the supervisor, when the MCR or its equivalent at Group level is breached the item must possess specific mechanisms that absorb losses on a going concern such as write-down features. National supervisors shall be able to assess these alternative mechanisms on a case by case basis and decide whether the instrument achieves the following four pillars of loss absorption • Prevention of insolvency • Not giving the investors the right to initiate liquidation • Not taking the claims of hybrid capital investors into considerations for determining insolvency • Not hindering capitalisation Instruments that absorb losses on a going concern in the above conditions would be limited to 35% of Tier 1. Note that the instruments falling in the sub-Tier limited to 25% of Tier 1 would be included in the calculation of the 35% limit. There would be no cap for ordinary shares, preference shares and instruments which have the following loss absorbency features	

			- mandatorily convertible into ordinary shares or preference shares on a breach of MCR or its equivalent at Group level - Convertible into ordinary shares or preference shares at any time at the discretion of the supervisor, if the supervisor considers that the insurer may breach the SCR - After a breachof SCR,investors bear the full downside risk through a pre-determined conversion ratio range. That is the number of shares/preference shares may be decreased if the share price increases but not increased if the share price decreases relative to the market price at issuance. Sufficient duration We agree – for the lock-in, we would recommend “On a breach of SCR, redemption shall be subject to the supervisor’s approval”. Also, § 3.182 says that the duration is meant as being the remaining maturity whereas § 3.191 talks about a sufficient duration, i.e. a legal maturity of more than 10 years at issue date. § 3.191 requires that any redemption should be subject to the approval of the supervisory: how does this approval fit in when the capital instrument has a legal maturity, or a call date? Free from requirements or incentive to redeem Depending on the decision taken on grandfathering of existing securities this condition would make the vast majority of current T1 hybrid capital instruments not qualify. Also it is to be noted that when facing stress scenarios certain insurers have recently decided not to call their transactions despite the presence of step-ups. Step ups greatly increase the marketability of securities without reducing the efficiency of the protection when needed as the recent examples have shown. We would therefore strongly recommend	

			allowing for step-ups and setting similar limits than in the banking sector (maximum of 50% of coupon and 100bps). We would recommend recognising the market practice and aligning the insurance methodology with the proposed banking methodology. We propose that a moderate step-up is allowed. CEIOPS may wish to put a limit on the amount of hybrid capital with step up. We believe 25% of Tier 1 is appropriate. Free from mandatory fixed charges "At all times coupons/dividends must be able to be cancelled and must at a minimum be cancelled on a breach of the SCR after which they can only be paid in exceptional circumstances and subject to the consent of the supervisory authority. Undertakings should have full discretion over the amount of payment; coupons/dividends must not be at a fixed rate and there should be no preference as to income or return of capital" This definition is not reflecting the current capital instrument market. This could lead to severe difficulties for undertakings to get financing. Most hybrid capital instrument will protect the issuer cash flows in times of stress. We would recommend limiting the wording to cases of breaches of SCR. Also, in the same paragraph, it should be necessary to clarify the terms "fixed rate". FFSA understands that CEIOPS would like to exclude from tier 1 debt elements where the coupon is unchangeable. However, the current sentence let think that fixed rate subordinated debt are excluded from tier 1 and only variable rated debt instrument would be included. "Coupons/dividends must be able to be cancelled on demand from the supervisor following a breach of the SCR after which they can only be paid in exceptional circumstances and subject to the	

			consent of the regulatory authority". Automatic cancellation may be included following a breach of the MCR or its equivalent for a Group. Also, the CP does not tackle the question of all the capital instruments that have been issued prior to Solvency II first application. In case the breach is corrected, the undertaking should not have to ask for an approval to start paying coupons/dividends again. FFSA recommends that the previous capital instruments be grandfathered, and analysed on a case-by-case basis together with the supervisor. Absence of encumbrances We believe that coupon pushers shall be allowed so long as the insurer does not face a breach of the SCR, in which case it would be potentially neutralised by the supervisor. On breach of the MCR or its Group equivalent, the neutralisation of the coupon pushers would be automatic. The paragraph xviii mentions "Where an investor subscribes for capital in an undertaking and at the same time that undertaking has provided financing to the investor, only the net financing provided by the investor is considered as eligible own funds" We want to ensure of the meaning of "financing" in this sentence, and verify under which circumstances this net financing would be considered. In no case, Financing should cover investment by the undertaking in equity or bonds (or other capital instruments) of the investor. This would be an adverse change compared to current situation. One has to remind that for insurance companies, investments are representing technical liabilities, which can not be comparable to bank activity. Furthermore insurers may own	

			minority participation in banks that grant loans to or buy securities from the insurer at arms' length. Only very specific transactions and cases shall be included here.	
990.	FRIENDS PROVIDENT	3.191.	If it is mandatory for dividend payments to be cancelled in the event of a breach of the SCR, then it will become very difficult to raise equity capital, even if the own funds at the date of the capital raising significantly exceed SCR. In circumstances where own funds are close to the SCR it will be virtually impossible. This will increase the risk to policyholders rather than reducing it as intended. It will also increase the cost of raising capital. Companies will require a large capital buffer to ensure that they can always pay a dividend. The restriction of dividends on breach of an SCR should instead form one of the possible actions under the 'ladder of intervention' Capital with incentives to redeem at a specified date cannot be tier 1 yet a similar dated stock maturing on the same date could be tier 1, despite being less absorbent than the stock with the incentive to redeem. See also 3.201.	See response to comment 964
991.	German Insurance Association – Gesamtverb and der D	3.191.	Subordination This requirement is not in line with the Framework Directive where subordination is only required with respect to all other obligations, including insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts. There is no requirement to rank the degrees of subordination between Tiers as there is no effective consequence on the degree of protection for policyholders to the extent that only liabilities that are subordinated to policyholders' interests in a winding up situation are considered for own funds classification in the first place. Redraft: the definition used for Tier 2 should be used for Tier 1: "the item ~~must~~ should be ~~the most deeply~~ subordinated in a	See response to comment 964

			winding-up". Loss absorbency As explained as part of our comments to 3.170, the requirement to absorb losses first and rank pari passu with shareholders capital is not in line with the Level 1 text which only requires subordination to policyholders' claims and to other senior investors. Furthermore, there should not be any de facto restriction on how undertakings absorb losses as it should be left to undertakings to decide how losses should be absorbed in particular on a going concern basis. It may be that under the supervisory ladder of intervention the undertaking would have to submit a plan on how it would restore the situation. Which items would absorb losses first would then be part of that plan which would depend and be tailored to best meet the needs of each situation. Redraft: "the item must be fully paid in, must ~~be the first instrument to absorb losses or rank pari passu with an instrument that absorbs first losses~~ meet the full absorption criteria to substantial degree and must not hinder recapitalisation on a going concern." Sufficient duration We do not agree with developing implementing measures on the link of liabilities duration with capital instruments duration for the reasons explained in 3.182. Furthermore, we note that it is required that any redemption should be subject to the approval of the supervisory. We have strong concerns of how this would work in practice when the capital instrument has a legal maturity, or a call date. In particular, we do not understand why redemptions which have been contractually foreseen and pre-approved by supervisors should be subject to	

			supervisory re-approval. Free from requirements or incentives to redeem Step-ups should not change the classification of an element of capital among Tiers for the following reasons: • The call is optional, not compulsory, so the issuer still keeps the flexibility to redeem or not the bond at the call date. Under ongoing conditions, the issuer would exercise its call option only if market conditions allow him to refinance itself at a lower cost* than the new stepped-up coupon. Under stressed conditions, it is very likely that refinancing conditions will be more expensive for the issuer than the legal step-up coupon, so it is very likely that the bond will not be redeemed. • The order of magnitude of step-ups (usually from 100-150bp) is lower than the market moves it has been observe in the interest rate markets over several years. In other words, step-ups do not encourage the issuer to redeem more than a fixed-rate coupon without step-up would do in a declining interest rates environment, nor than a floating-rate coupon without step-up would do in a rising interest rates environment. • When faced with the recent stress market conditions certain insurers have not called their transactions despite the presence of step-ups. Instead, step ups greatly increase the marketability of the instrument without reducing the efficiency of the instrument when needed as the recent examples have shown. The increase of spread by the market on these tools reflect the risk that the investor runs for the "extension risk" (not exercise of call option by Issuer)	

			• Redraft allowing step-ups with criteria (similar to banking sector): - step-up do not exceed the maximum between 100bp and half of the spread at issue; and - step-up do not occur earlier than 10 years after the issue date Free from mandatory fixed charges The requirement of "no fixed rate" for coupons deviates significantly from current Tier 1 instruments characteristics where investors expect to receive a predefined coupon stream as long as ordinary dividends are being paid and no breach of the regulatory capital requirement has occurred. It is unclear whether the intention here is to restrict Tier 1 to variable rate debt instruments or whether only instruments where coupons are unchangeable should be excluded. In any case, the "no fixed rates" requirement should not be a pre-requisite for Tier 1. In particular, when instruments possess other equally strong or even stronger loss absorption features such as deferral or cancellation of coupons, this requirement does not make any sense. On the other hand, an income-related coupon is likely to have a negative impact on the tax deductibility of coupons in some jurisdictions. We are strongly concerned that the decision of whether or not to pay a coupon/dividend on hybrid instruments is based on supervisors' assessment of the solvency and financial situation of institution. We doubt that investors accept clauses which state that payments are cancelled "as and when the undertaking needs to absorb losses" even if the SCR is not breached. The trigger point for the automatic cancellation of payments should be the MCR (see comments to 3.170) otherwise the instruments	

			may become unattractive to investors and too expensive for undertakings and their policyholders. In case the breach is corrected, the undertaking should not have to ask for an approval to start paying coupons/dividends again. Early triggering is punishing because of the effect that non-payment gets directly public, there as breaching capital requirements normally would not result in ad hoc public disclosure. Payments through alternative cash settlement mechanisms must be allowed. One of the characteristics which needs to be met in order to be eligible for Tier 1 or Tier 2 is the absence of mandatory fixed charges requirement. We agree in principle, but the key characteristic should be that alternative payments can replace cash payments as this ensures that during distressed periods the funds available to protect policyholders are not reduced. These alternative payments should not be limited to stock only as most bond investors cannot invest in equity and therefore this could prevent many fixed income investors from participating in the market of hybrids. Alternative payments through alternative cash settlement mechanisms (ACSM) must be allowed, such as: Proceeds raised through the issuance of Parity or junior securities (issue of new Tier 1 instrument of the same kind or new shares of the Issuer/Guarantor) or Payment in kind (increase of the principal) which do not affect policyholder protection (because they are subordinated and do not result in cash exiting the company) This "ACSM" mechanism has to be considered, as considered by Rating Agencies and Market, as NON CUMULATIVE, because the flows from the payment do not impact the cash of the company, because the source is new capital. Absence of encumbrances	

			We believe that coupon pushers shall be allowed as long as the insurer does not face a breach of the SCR, in which case it would be potentially neutralised by the supervisor. On breach of the MCR or its Group equivalent, the neutralisation of the coupon pushers would be automatic. We consider that the so called "dividend pusher" has to be allowed because a company can decided NOT to pay dividend also for strategic reasons, not only because it is in insolvency situation. Therefore if the dividend is not OPTIONALLY paid the hybrid coupons CAN be paid (there is in any case the optional defer clause that can be activated); on the contrary if the hybrid coupons are not paid, the dividend cannot be paid. We want to ensure of the meaning of "financing" in this sentence, and verify under which circumstances this net financing would be considered. In no case, it should cover investment by the undertaking in equity or bonds (or other capital instruments) of the investor. This would be an adverse change compared to current situation. One has to bear in mind that for insurance companies, investments are backing mainly technical liabilities, which cannot be comparable to the banking sector's liability side of the balance sheet. Furthermore, insurers may own minority participation in banks that grant loans to or buy securities from the insurer at arms' length. Only very specific transactions and cases shall be included here. * footnote: The term "lower cost" refers not only to an immediate benefit due to a more advantageous cost of refinancing, but it has to be seen in a wider view considering the overall company liabilities management. From this point of view an expiring debt could be refinanced at a higher cost in order not to compromise the economic impact of the other bonds issued and on the market, the	

			economic impact of company share, and the spread level of future issuances. In other words reputational considerations have to be taken into account. Under stressed conditions, it is very likely that reputional risk would be less considered in deciding if to redeem a bond at a higher cost or not.	
992.	GROUPAMA	3.191.	xvii. We do not understand why payment of coupon should need the supervisor approval when solvency issues and SCR covering issues have been solved. We are concerned about CEIOPS' suggestion on "net financing". We do not think that we should consider investment in capital instruments (as equities or bonds) to be covered by this net financing approach and we think it should be limited to loans only. This would be an adverse change compared to the current situation. It should be borne in mind that investments held by insurance companies back technical liabilities, contrary to the banking sector: those assets should not be considered to be financing. xvii. Clarifications are welcomed about the sentence "fixed rate" in this paragraph. We understand that CEIOPS wanted to exclude from tiers 1 debt elements where the coupon is unchangeable. However, the current sentence let us think that fixed rate subordinated debt are excluded from tiers 1. We do not see any reason to include only variable rated debt instrument. We suggest CEIOPS rewriting more clearly this paragraph. Finally, the CP requirements for subordinated liabilities are very restrictive and are not included in current capital instruments: - For instance, Tiers 1 or 2 should include capital instruments where redemption is linked to the undertaking's solvency position, and not necessarily the ability to absorb losses.	See response to comment 964

			- Furthermore, we question the fact that there should be no incentive to redeem debt as step-ups. It is to be noted that when facing stress scenarios certain insurers have recently decided not to call their transactions despite the presence of step-ups. Step-ups greatly increase the marketability of securities without reducing the efficiency of the protection when needed, as the recent examples have shown. We would recommend allowing for step-ups (with similar limits to those in the banking sector, for instance). This could lead to undertakings having severe difficulties in obtaining financing. We suggest regarding eligible debt that IFRS principles be adhered to.	
993.	Groupe Consultatif	3.191.	Introducing detailed rules on coupons / dividends may be inconsistent with the principle based approach of the level 1 text	See response to comment 964
994.	Investment & Life Assurance Group (ILAG)	3.191.	See our comments under 3.85. The rule should be "freely accessible to the firm in the circumstances of the 1:200 stress on a going concern basis and without let or hindrance".	See response to comment 964
995.	KPMG ELLP	3.191.	See 3.85	Noted
996.	Legal & General Group	3.191.	The requirements for Tier 1 own funds to meet certain criteria are too stringent and should be used as a guide in the classification. 3.191 (xiii) - We do not agree with this. For Tier 1 to comply with this requirement it would require further subordination which is too restrictive and closes the market for Tier 1 issuances. Most fixed income investors are prevented from investing in instruments which do not have a liquidation preference to ordinary shares. Lower ranking removes the bond floor and would make Tier	See response to comment 964

			1 holders pari passu with equity holders. 3.191 (xiv) - We do not agree with this. The proposals will make them unplaceable with traditional fixed income investors. 3.191 (xv) - Determining the average duration of insurance liabilities would be difficult for investors to determine. 3.191 (xvi) - We do not agree with this. Changes to the step and possible extension to maturities limits the markets appetite for these instruments 3.191 (xvii) - We do not agree with this. If coupons can be cancelled they will adopt loss absorbency features, making the instruments unsuitable for traditional fixed income investors. The proposed changes also restrict the ability to include ACSM features and means that UK Insurers will be unable to issue Tier 1 capital in tax deductible formats, which represents a competitive disadvantage for UK insurers versus other jurisdictions in which tax permits a deduction.	
997.	Lloyd's	3.191.	Sub paragraph xv - This requirement should be triggered by a breach of MCR not SCR as the minimum solvency level. The requirement for the SCR to act as the trigger point would make the issue of such debt very unattractive to potential investors and thus very expensive for issuers. Sub paragraph xvi - The rationale for excluding hybrid instruments with an incentive to redeem from Tier 1 is unclear; an incentive to redeem (belonging to the issuer) does not weaken the instrument's availability to meet losses.	See response to comment 964

998.	Munich RE	3.191.	The criteria for Tier 1 elegibility are far more restrictive than currently laid down in the Directive. As currently stipulated in the consultation paper, essentially only ordinary shares will qualify as Tier1. Subordination: The requirement is not in line with the Directive, where subordination is only required in respect of all other obligations, including insurance and reinsurance obligations to policyholders and beneficiaries of insurance and reinsurance contracts. There is no requirement to rank the degree of subordination between Tiers as this would not have any influence on the degree of protection for policyholders. Redraft: " the item should be subordinated in a winding-up… Loss absorbency: the requirement to absorb losses first and rank pari passu with shareholders capital is not in line with the Level 1 text, which only requires subordination to policyholders' claims and to other senior investors. Furthermore, there should not be any de facto restriction on how undertakings absorb losses, as it should be left to undertakings to decide how losses should be absorbed, in particular on a going concern basis. Redraft: "the item must be fully paid in, must ~~be the first instrument to absorb losses or rank pari passu with an instrument that absorbs first losses~~ meet the full absorption criteria to a substantial degree…." Sufficient duration We do not agree with developing implementing measures that link the minimum maturity of hybrid capital to the duration of insurance liabilities. In addition it is of the utmost importance, that maturity refers to	See response to comment 964

			the legal maturity, but not to the first call date. Otherwise the instrument would not be marketable. Free from requirements or incentives to redeem Step-ups should not change the classification of an element of capital among Tiers for the following reasons: The call is optional, not compulsory, so the issuer still retains the flexibility to redeem or not to redeem the bond at the call date. The issuer would exercise its call option only if market conditions allowed it to refinance itself at a lower cost than the new stepped-up coupon. Under stressed conditions, it is very likely that refinancing conditions will be more expensive for the issuer than the step-up coupon, so it is very likely that the bond will not be redeemed. In addition, moderate step-ups (up to the higher of 100bp or 50% of the initial spread) may constitute a lower incentive than a change in refinancing costs due to reduced spreads and / or reduced interest rates. There are many examples of financial institutions that have not called their hybrid capital instruments during the current financial crisis despite the presence of incentives to redeem. Free from mandatory fixed charges: The concept of “no fixed rate” would deviate significantly from the current Tier1-style instruments, where investors rely on the right to receive a predefined coupon/dividend stream as long as ordinary dividends are being paid and no breach of regulatory capital requirements has occurred, and therefore would make the instruments less attractive to traditional hybrid investors [=> negative impact on marketability and pricing]. In addition, an income-related coupon may endanger tax-deductibility of coupon payments in some jurisdictions. Fixed income investors require a fixed rate- or a definable rate such as floating rate – on their investments. This is also typical of	

			insurance companies, a key investor base of hybrid securities. The proposed requirement has no precedent in the capital markets and appears to be non viable. Although issuers have full discretion on their hybrid instruments payment discipline must be maintained in relation to other instruments within an issuer´s capital structure. This is usually provided for by reference to payments on the issuer´s ordinary shares. Often a dividend pusher is used. Under this mechanism, if payments have previously been made on ordinary shares, payments are compulsory on the hybrid securities. This kind of payment discipline should be permitted in order to ensure marketability to investors. Alternative Coupon Settlement is not mentioned. According to current market standards, ACSM should be allowed, as this mechanism would be important to attract hybrid capital investors and it is not currently contemplated in the CEIOPS proposal (=> no level playing field with banks, as CEBS allows ACSM). In our view the inclusion of ACSM does not lessen the strength of tier 1 capital; the deferral provisions are still in place to enable insurers to defer coupons when they desire to preserve cash. Moreover, any payment of coupons from the use of ACSM is typically in a situation when the issuer has recovered to financial strength; e.g. settling deferred coupons where there is a subsequent payment of dividends on common equity or redemption of hybrid Tier 1. There is no obligation of an issuer to settle deferred coupons using ACSM; rather it enables the issuer to make any missed coupons at a time when the issuer has recovered. Trigger point should be set at or very close to the MCR level (not at SCR-level). Setting the trigger point at the SCR-Level would substantially increase investors' risk [compared to current market practice, where trigger points are set at the minimum solvency margin level] and therefore would have a negative effect on the	

			marketability of the instruments.	
999.	OAC Actuaries and Consultants	3.191.	See our comments under 3.85. The rule should be "freely accessible to the firm in the circumstances of the 1:200 stress on a going concern basis and without let or hindrance"	noted
1,000.	Pearl Group Limited	3.191.	Subordination This requirement is not in line with the Framework Directive where subordination is only required with respect to all other obligations, including insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts. There is no requirement to rank the degrees of subordination between Tiers as there is no effective implication on the degree of protection for policyholders to the extent that only liabilities that are subordinated to policyholders' interests in a winding up situation are considered for own funds classification in the first place. Redraft: the definition used for Tier 2 should be used for Tier 1: "the item ~~must~~ should be ~~the most deeply~~ subordinated in a winding-up". Loss absorbency There should not be any de facto restriction on how undertakings absorb losses as it should be left to undertakings to decide how losses should be absorbed in particular on a going concern basis. It may be that under the supervisory ladder of intervention the undertaking would have to submit a plan on how it would restore the situation. Which items would absorb losses first would then be part of that plan which would depend and be tailored to best meet the needs of each situation. Redraft: "the item must be fully paid in, must ~~be the first~~	See response to comment 964

			~~instrument to absorb losses or rank pari passu with an instrument that absorbs first losses~~ meet the fully absorption criteria to substantial degree and must not hinder recapitalisation on a going concern." Sufficient duration See comments under 3.182. Free from requirements or incentives to redeem This ignores the value of and flexibility provided by short first call dates which do not coincide with step-ups or market expectations of redemption. Such a call option has considerable value for the issuer, both because of the option value and because of the flexibility it provides. A first call date without step-up or reputational impact of not being exercised is found frequently in retail targeted instruments, and the behaviour of issuers on the first call dates of those instruments has demonstrated clearly that they are making use of the flexibility and will call or not call only depending on their own requirements. Free from mandatory fixed charges This is slightly unclear. It requires coupon deferral for "an indefinite term" which could have several meanings. Furthermore, we do not agree with the proposal that deferred coupons/dividends should only be paid "subject to the consent of the supervisory authority". We consider it unnecessary to make the repayment of dated capital instruments dependent on regulatory approval, provided the issuer is solvent and meets its regulatory capital requirements. The same applies to deferred interest. We note that (unlike QIS4) CP46 does not make any reference to ACSM as a means of conserving cash. We view ACSMs as very	

			useful in distress situations and think that they should be acknowledged as a means of achieving a non-cash-cumulative instrument. Absence of encumbrances We agree that a capital instrument must be free from encumbrances. However, we believe that coupon pushers should be allowed as long as the insurer does not face a breach of the SCR, in which case it would be potentially neutralised by the supervisor. On breach of the MCR or its Group equivalent, the neutralisation of the coupon pushers would be automatic. We consider that the so called “dividend pusher” has to be allowed because a company can decided NOT to pay dividend also for strategic reasons, not only because it is in insolvency situation. Therefore if the dividend is not OPTIONALLY paid the hybrid coupons CAN be paid (there is in any case the optional defer clause that can be activated); on the contrary if the hybrid coupons are not paid, the dividend cannot be paid.	
1,001.	ROAM –	3.191.	As a general comment, we do not support the treatment of subordinated debt as conditions exposed should lead to a very high cost for insurance companies and may reduce to an important extent the source of funding. For example, the cost for non dated debts will be much more expensive. Besides, the conditions will reduce a lot the classification in tier 1 of such debts, as far as we understand, concerning the “no fixed rate” concept. Please could you explain into more details this concept? Please note that we support in any case the grandfathering clause for existing debt (as is the case in the bank sector). Subordination	See response to comment 964

			We disagree with this requirement to include the deepest subordination of the instrument on liquidation. In liquidation, as opposed to on a going concern, this requirement would not improve policyholders and reinsurance contract holders' recoveries. We would recommend using "the item must be subordinated to all insurance policyholders, reinsurance contracts and unsecured creditors" Loss absorbency We disagree with the notion of first to absorb losses. We would recommend the following wording. The item must be fully paid in, must be able to absorb losses when the SCR is breached and upon request from the supervisor, when the MCR or its equivalent at Group level is breached the item must possess specific mechanisms that absorb losses on a going concern such as write-down features. National supervisors shall be able to assess these alternative mechanisms on a case by case basis and decide whether the instrument achieves the following four pillars of loss absorption - Prevention of insolvency - Not giving the investors the right to initiate liquidation - Not taking the claims of hybrid capital investors into considerations for determining insolvency - Not hindering capitalisation Instruments that absorb losses on a going concern in the above conditions would be limited to 35% of Tier 1. Note that the instruments falling in the sub-Tier limited to 25% of Tier 1 would be included in the calculation of the 35% limit.	

			There would be no cap for ordinary shares, preference shares and instruments which have the following loss absorbency features - mandatorily convertible into ordinary shares or preference shares on a breach of MCR or its equivalent at Group level - Convertible into ordinary shares or preference shares at any time at the discretion of the supervisor, if the supervisor considers that the insurer may breach the SCR - After a breach of SCR, investors bear the full downside risk through a pre-determined conversion ratio range. That is the number of shares/preference shares may be decreased if the share price increases but not increased if the share price decreases relative to the market price at issuance. Sufficient duration We agree – for the lock-in, we would recommend "On a breach of SCR, redemption shall be subject to the supervisor's approval". Also, § 3.182 says that the duration is meant as being the remaining maturity whereas § 3.191 talks about a sufficient duration, i.e. a legal maturity of more than 10 years at issue date. § 3.191 requires that any redemption should be subject to the approval of the supervisory authority : how does this approval fit in when the capital instrument has a legal maturity, or a call date? Free from requirements or incentive to redeem Depending on the decision taken on grandfathering of existing securities this condition would make the vast majority of current T1 hybrid capital instruments not qualify. Also it is to be noted that when facing stress scenarios certain insurers have recently decided not to call their transactions despite the presence of step-ups. Step	

			ups greatly increase the marketability of securities without reducing the efficiency of the protection when needed as the recent examples have shown. We would therefore strongly recommend allowing for step-ups and setting similar limits than in the banking sector (maximum of 50% of coupon and 100bps). We would recommend recognising the market practice and aligning the insurance methodology with the proposed banking methodology. We propose that a moderate step-up is allowed. CEIOPS may wish to put a limit on the amount of hybrid capital with step up. We believe 25% of Tier 1 is appropriate. Free from mandatory fixed charges "At all times coupons/dividends must be able to be cancelled and must at a minimum be cancelled on a breach of the SCR after which they can only be paid in exceptional circumstances and subject to the consent of the supervisory authority. Undertakings should have full discretion over the amount of payment; coupons/dividends must not be at a fixed rate and there should be no preference as to income or return of capital" This definition is not reflecting the current capital instrument market. This could lead to severe difficulties for undertakings to get financing. Most hybrid capital instrument will protect the issuer cash flows in times of stress. We would recommend limiting the wording to cases of breaches of SCR. Also, in the same paragraph, it should be necessary to clarify the terms "fixed rate". ROAM understands that CEIOPS would like to exclude from tier 1 debt elements where the coupon is unchangeable. However, the current sentence seems to suggest that fixed rate subordinated debt is excluded from tier 1 and only variable rate debt instrument would be included.	

			"Coupons/dividends must be able to be cancelled on demand from the supervisor following a breach of the SCR after which they can only be paid in exceptional circumstances and subject to the consent of the regulatory authority". Automatic cancellation may be included following a breach of the MCR or its equivalent for a Group. Also, the CP does not tackle the question of all the capital instruments that have been issued prior to Solvency II first application. ROAM recommends that the previous capital instruments be grandfathered, and analysed on a case-by-case basis together with the supervisor. Absence of encumbrances We believe that coupon pushers shall be allowed so long as the insurer does not face a breach of the SCR, in which case it would be potentially neutralised by the supervisor. On breach of the MCR or its Group equivalent, the neutralisation of the coupon pushers would be automatic. The paragraph xviii mentions "Where an investor subscribes for capital in an undertaking and at the same time that undertaking has provided financing to the investor, only the net financing provided by the investor is considered as eligible own funds" We want to ensure of the meaning of "financing" in this sentence, and verify under which circumstances this net financing would be considered. In no case, financing should cover investment by the undertaking in equity or bonds (or other capital instruments) of the investor. This would be an adverse change compared to current situation. One has to remind that for insurance companies, investments are representing technical liabilities, which can not be comparable to bank activity. Furthermore insurers may own	

			minority participations in banks that grant loans to or buy securities from the insurer at arms' length. Only very specific transactions and cases shall be included here.	
1,002.			Confidential comment deleted	
1,003.	UBS	3.191.	Subordination A hybrid Tier 1 security is inconsistent with a fixed income investor's mandate where the security ranks parri passu with common equity in liquidation. The majority of hybrid Tier 1 issues is senior to common equity. Although there is no certainty that hybrid Tier 1 will deliver better recovery results in liquidation, fixed income investors are often not allowed to hold securities which rank pari passu with common equity. Investors have repeatedly mentioned to us in the past that when a security is deeply subordinated they would only consider buying hybrid Tier 1 securities of the most strongly capitalised institutions (i.e. those who do not necessarily require to raise new capital in the first place). Free from mandatory fixed charges Currently in Europe the types of coupon deferral provisions vary significantly, and the key aspects to focus on to develop consistency are: ♦ should Hybrid Tier 1 coupon deferral be discretionary or automatic ? To answer this, it is important for CEIOPS to consider whether automatic deferral adequately addresses any increased risk of confidence in the Insurer ♦the circumstances when the regulator may intervene to require non-payment ♦ if Hybrid Tier 1 coupon deferral should be discretionary, is their adequate protection for investors to ensure their priority above	See response to comment 964

			common equity ? ♦ if Hybrid Tier 1 coupon deferral is automatic, what should be the trigger point for such deferral ? The requirement that payments be cancelled when the SCR is breached seems harsh, particularly on Tier 2 capital. ♦ should coupons that are deferred be non-cumulative or permitted to be settled using deferred settlement provisions ? Our broad comments again are that hybrid tier 1 should not be aligned with common equity and rather have priority in relation to payments over common equity. Coupons in relation to hybrid tier 1 are the primary focus of the fixed income investor base and their primary concern is to ensure that they could not be subordinated to equity holders at the discretion of the company. In jurisdictions such as the UK, a fully discretionary right to defer coupons is acceptable to investors as the UK rules permit a “dividend stopper” to preserve order of priority for hybrid tier 1 investors, above common equity investors. Dividend stopper language however is not legally permissible in several jurisdictions in Europe (e.g. Germany, Spain, Portugal, France, Belgium); therefore to propose a requirement to introduce full discretion over coupons across the EU, would have a significant investor impact for issuers in those jurisdictions. A secondary point is in relation to ACSM, or deferred coupon settlement provisions. In various jurisdictions across the EU, hybrid tier 1 rules have permitted the inclusion of ACSM style features primarily to ensure tax deductibility of coupons for directly issued tier 1 transactions (eg. UK & Netherlands). A fully non-cumulative transaction will cause tax concerns in most jurisdictions across Europe and again is moving towards an alignment with common equity approach. In our view, the inclusion of ACSM does not lessen	

			the strength of tier 1 capital; the deferral provisions are still in place to enable issuers to defer coupons when they desire to preserve cash, and even at the time when ACSM is applied does not adversely impact the company's capital position as it is matched by an equity inflow. Moreover, any payment of coupons from the use of ACSM is typically in a situation when the bank has recovered to financial strength; eg. settling deferred coupons where there is a subsequent payment of dividends on common equity or redemption of hybrid Tier 1. There is no obligation on the company to settle deferred coupons using ACSM; rather it enables the company to make any missed coupons at a time when the company has recovered. In one sense, this is akin to a bank paying a special dividend or a special share buyback to investors after recovering from a period of financial distress – common equity dividends are to a degree cumulative in this sense. Accordingly, our recommendation is to ensure that any proposal by CEIOPS does not change the order of priority of ongoing payments to investors; the proposals should enable dividend pusher style provisions (which are more legally effective across Europe) and enable banks to include ACSM style features if this is required for tax deductibility. Free from requirements or incentives to redeem One of the reasons why the hybrid Tier 1 market has grown significantly over the last years is that an increasing number of institutional investors are allowed to invest in this asset class due to the existence of a step-up. The investor base for these securities are fixed income investors (not equity investors), who are willing to take additional risk for additional yield. Almost all significant fixed income investors include hybrid Tier 1 securities in their investment mandate.	

			The investment mandates of many institutional investors do not permit investments in "true" perpetual securities. The existence of a step-up in a hybrid Tier 1 transaction allows the portfolio managers to argue that such an investment would fall within their guidelines. Even though there are some accounts who can invest in securities with extension risk it certainly is not the norm. Against this background we believe that instruments which do not include a redemption incentive at all will no longer be eligible investments for a large number of pension funds, insurance companies, fund managers and asset managers. As a consequence, the reduced demand from this investor base would significantly increase the cost of raising Tier 1 for issuers. The smaller investor base means that an issuer is dependent on fewer investors resulting in a higher execution risk for capital markets transactions. Absence of encumbrances The comments that the instrument should not be connected with any other transaction should be put into context, because some groups operate a holding company / operating company structure. The requirement of an "absence of encumbrances" is a well known and important requirement for capital to qualify as own funds. However, CP 46 contains the very broad statement that only "net financing", i.e. capital received minus any type of "financing" provided to the suppliers of "capital", may qualify as Tier 1 or Tier 2. Such deductions could place insurance companies that are part of an insurance group at a significant disadvantage. Deductions should therefore only be required in cases where such (back-to-back) "financing" also qualifies as own funds for the supplier of capital.	
1,004.	Association of British	3.192.	See comments under 3.170	Noted

	Insurers			
1,005.	CEA, ECO-SLV-09-441	3.192.	The requirement is not in line with the Framework Directive. We do not agree with limiting Tier 1 to ordinary share capital or its equivalent for mutuals as explained in 3.170. In any case, there should not be any de facto restriction on how undertakings absorb losses or recapitalise as this would depend on each case.	See response to comment 964
1,006.	CFO	3.192.	Comments in 3.98 and 3.190 are also relevant here.	Noted
1,007.	CRO Forum	3.192.	We do not agree limiting Tier 1 to ordinary share capital, see also §3.170	Noted. See response to comment 964
1,008.	German Insurance Association – Gesamtverband der D	3.192.	The requirement is not in line with the Framework Directive We do not agree with limiting Tier 1 to ordinary share capital or its equivalent for mutuals as explained in 3.170. In any case, there should not be any de facto restriction on how undertakings absorb losses or recapitalise as this would depend on each case.	See response to comment 964
1,009.	Lloyd's	3.192.	See comment to 3.170.	Noted
1,010.	Pearl Group Limited	3.192.	See comments under 3.170	Noted
1,011.	CFO	3.193.	Comments in 3.190 are also relevant here.	Noted
1,012.	CRO Forum	3.193.	The advice in this paragraph could potentially generate significant tax issues in several European jurisdictions and prevent the creation of tax-deductible capital instruments.	Noted
1,013.	FFSA	3.193.	We would welcome examples of such mechanisms to be detailed for instance write-down of principal or conversion into shares under specific circumstances	Noted

1,014.	Munich RE	3.193.	… potential future outflows to the holders are reduced. This can also be achieved by deferral language => Conversion and / or write-down are not necessary to reduce the future outflows to hybrid investors.	Noted
1,015.	Association of British Insurers	3.194.	See comments under 3.191 – Loss absorbency	Noted
1,016.	BNP PARIBAS	3.194.	For the reasons explained above, we do not believe that this is achievable nor results in a saleable security.	Noted
1,017.	CEA, ECO-SLV-09-441	3.194.	There should not be any de facto restriction on how undertakings absorb losses or recapitalise as this would depend on each case.	Noted
1,018.	CFO	3.194.	Comments in 3.190 are also relevant here.	Noted
1,019.	CRO Forum	3.194.	See our detailed comment on §3.84 A requirement that capital instrument should "not hinder recapitalisation" means that T1 is restricted to ordinary share capital. Secondly, if hybrid holders took the first loss after shareholders (as innovative T1 demonstrably does at the moment), the hybrids would serve to protect policyholders, senior creditors and therefore the solvency of the company – their purpose is not to protect shareholders, so we fail to understand the desirability of shareholders not taking the first loss.	Noted
1,020.	German Insurance Association –	3.194.	There should not be any de facto restriction on how undertakings absorb losses or recapitalise as this would depend on each case.	Noted

	Gesamtverband der D			
1,021.	Munich RE	3.194.	For the reasons explained above we do not believe that this is achievable nor results in a saleable security.	Noted
1,022.	Pearl Group Limited	3.194.	See comments under 3.191 – Loss absorbency	Noted
1,023.			Confidential comment deleted	
1,024.	AMICE	3.195.	We believe in particular that the equalisation provision • should be taken into account as a part of eligible own funds and • should be classified as Tier 1 in the own funds, to the extent that it belongs to surplus assets over liabilities. In our view, this is also justified because given the strict regulations for its use, the equalisation provision is a capital element in particular for the protection of the rights and benefits of the policyholders. There is no justification for the difference between the value of technical provisions (art 74 to 85) on a going concern basis and the technical provisions in a winding-up with no transfer of portfolios, to be classified as Tier 3. We suggest deleting this paragraph. AMICE supports the idea that all reserves must be included in Tier 1, if not matched with a commitment to be paid to a third party and this without consideration of their legal destination assignment. In addition, it seems irrational to treat certain reserves with less flexibility in a business continuity situation than in the case of a winding up, where all assets will be mobilized. We agree that there should not be any double counting on deferred	Noted

			taxes between own funds and SCR calculation. However, we consider that deferred taxes should be fully recognised, as long as it is probable that they will be recoverable. AMICE considers that the deferred tax position has to be calculated taking into account both the asset and SCR bases. In case of net active position, the share potentially recoverable by the tax authorities (carry back process), must fully included in Tier 1. The excess could be included in Tier 3 in accordance with the reasonable expectation of future profits. For the intangible assets, AMICE considers that if an intangible asset is not set to zero in accordance with CEIOPS requirements, it cannot be excluded from the own funds.	
1,025.	Association of British Insurers	3.195.	Solvency II is based on a total balance sheet approach. Therefore, to the extent net deferred tax assets are valued on a market consistent basis and are subordinated to policyholder liabilities they should be accounted for in Tier 1. Equally, to the extent that intangible assets have an economic value and have been allocated capital requirements under the SCR, they should be recognised as Tier 1 capital. Deferred tax assets should not be wholly excluded from own funds and should be considered along with feedback from CP35. The focus here appears to be on value on "winding up" rather than value to the company as a going concern. We believe that the deferred tax asset should be included to the extent that it can be shown to be recoverable on a going concern. We believe this is justified because in the event of insolvency of the firm, any purchaser of the fund is likely to be a going concern itself, and is likely to be able to value the deferred tax asset on this basis. Similarly, any differences in the technical provisions calculated under Solvency II and under national GAAP should be part of the	Noted

			Solvency II equity balancing item to the extent market consistent technical liabilities are by definition reflecting the economic value of policyholders' liabilities under transfer or settlement approach assumption (art 74). This is typically the case of equalisation reserves which would already be partly accounted for in the market consistent value of technical liabilities (on expected value basis + risk margin). The "remaining part of equalisation reserves" is therefore part of the excess of assets and should therefore be accounted for in Tier 1. We are concerned by the confusion in this paper between calculating capital and calculating the best estimate with an additional deduction based on calculating technical provisions, on a run off basis rather than going concern. This confusion should be avoided as it risks double counting and is not in line with Article 76 (2) of the Framework Directive, which requires technical provisions to be a best estimate of future cashflows.	
1,026.	ASSOCIATION OF FRIENDLY SOCIETIES	3.195.	See our comments under 3.96. We believe that a "winding up test" would require a completely different solvency assessment.	Refer to comment 519
1,027.			Confidential comment deleted	

				See comment 520
1,028.	CEA, ECO-SLV-09-441	3.195.	Only when liabilities have an economic value should they be included in the Solvency II market consistent valuation of liabilities (see CP35). Article 87 of the Framework Directive requires that Solvency II is based on a holistic balance sheet approach where assets and liabilities are valued on a market consistent basis and whereby the excess of these assets over liabilities are part of own funds. Failing to adopt such an approach and instead assessing own funds based on national balance sheet reporting requirements is the wrong approach. Only when liabilities have an economic value should they be included in the Solvency II market consistent valuation of liabilities (see CP35). To the extent net deferred tax assets are valued on a market consistent basis and are subordinated to policyholder liabilities they should be accounted for in Tier 1. (We note that the provision here is in contradiction with the provision in 3.197).	Noted

			When liabilities do not have any economic value, typically because they are motivated by national arbitrary reporting requirements, they should NOT be accounted for under Solvency II and should therefore implicitly fall in the own funds balancing item of retained earnings and P/L which is Tier 1 capital. In some Members States this may be typically the case for the so called “legal” and “statutory” reserves. Any differences in the technical provisions calculated under Solvency II and under national accounting rules should be part of the Solvency II equity balancing item to the extent market consistent technical liabilities are by definition reflecting the economic value of policyholders’ liabilities under transfer or settlement approach assumption (art 74). This is typically the case of “equalisation reserves” which would already be partly accounted for in the market consistent value of technical liabilities (on expected value basis + MVRM). The remaining part of what is called under national accounting rules “equalisation reserves” is therefore part of the excess of assets and should therefore be accounted for in Tier 1. Equally, to the extent that intangible assets have an economic value and have been allocated capital requirements under the SCR, they should be recognised as Tier 1 capital. (We note that the provision here is in contradiction with the one in 3.199). We are strongly concerned and disagree with what Ceiops calls the “winding-up gap” which is probably based on a misunderstanding of what the Framework Directive is trying to achieve. The requirement however seems to be implying that the Solvency II policyholder liabilities are not reflecting the amount at which policyholder liabilities would have to be settled in the case of a	

			winding up. This is misleading and probably based on a misunderstanding of what article 74 of the Framework Directive is trying to achieve. As Ceiops is acknowledging in its advice, under Solvency II assets and liabilities are to be valued on ongoing concern basis. We therefore do not understand how Ceiops then goes on to discuss policyholders' liabilities under a winding basis when it acknowledges that this is clearly contradictory to the Framework Directive. There is no evidence why the value of policyholders' liabilities is higher in a winding-up case than in ongoing concern basis. The risk of lapses and surrenders being higher than anticipated in a winding-up is captured by the SCR lapse risk. Risks should not be double counted between what is allowed for in the in the market consistent values of a Solvency II balance sheet and the adverse 1/200 year event scenario covered by the SCR. We would also like to point out that technical provisions under Solvency II are made of the sum of Best Estimate + Market Value Risk Margin, meaning that there is already an additional margin above policyholders' liabilities calculated on best estimate basis. Typically, for life insurance in some markets, it has been seen during the QIS 4 that generally the Best Estimate is higher that local GAAP technical reserves. Typically, this difference would fall in the excess of assets over liabilities which is Tier 1. Ceiops should not depart from the requirements in the Level I text. We think that the wording "available to absorb losses at any time from any segment of liabilities or from any risk" deviates from the characteristic of "permanent availability" which has to be met substantially. Alignment with the Level I text is desirable: "Reserves, to the extent that they are available to absorb losses ~~at any time~~ permanently ~~from any segment of liabilities or~~ from ~~any~~	

			risks substantially, as and where they occur".	
1,029.	CFO	3.195.	The use of equalisation reserves is not relevant in the context of an economic balance sheet as the Solvency II requirements are underpinned by economic principles. The CFO Forum does not consider the use of equalisation reserves to be relevant in the context of an economic balance sheet. The assessment of assets and liabilities under Solvency II is market consistent and as a result the classification of reserves and provisions is defined under economic principles. Local accounting bases should not be used as they relate to non-economic values. Equalisation, legal and statutory reserves identified in local GAAP, tax or regulatory requirements, are effectively split where part may form a component of the technical provisions, whilst the remainder is released to capital in the Solvency II balance sheet. Consequently the guidance in the second sub-paragraph (a) under "Excluded from Tier 1 excess of assets over liabilities are:" is irrelevant and should be deleted. The proposals set limitations on the loss absorption capacity of the difference between the value of the technical provisions calculated in accordance with the Directive and the liability in case of winding-up with no transfer of portfolios. The winding-up with no transfer of portfolios is not consistent with a market consistent approach and is therefore not relevant here and should be removed. Solvency II requires capital calibrated to a one-year VaR approach such that after the occurrence of the shock event, the undertaking has sufficient assets to be able to transfer its liabilities to a third party. As a result, it is not clear why there would be a difference in value between winding-up and going concern. The SCR already includes the ability to transfer and therefore we believe that including a "winding-up gap" result is effectively double counting.	Noted

			The excess of assets over liabilities includes deferred tax assets as well as deferred tax liabilities. It does not make economic sense to exclude the first while maintaining the second. Net deferred tax assets, to the extent they are recoverable, must be classified as Tier 1 capital. Comments in 3.33, 3.85, 3.96, 3.100 and 3.190 are also relevant here.	
1,030.	CRO Forum	3.195.	Comments on paragraph 3.195 through 3.199 We note that in our view "excess of assets over liabilities" should always be based on a valuation approach that is market consistent. We believe it is needed to clarify this, i.e. including the statement that a correction is needed for any asset or liability that is not valued at a market consistent basis. For further details, see the respective comments on CP 35 "valuation of other assets and liabilities", e.g. by the CRO Forum and CFO forum. Regarding the exclusion on Tier 1 for excess of assets over liabilities, we note the following points: a/ Reserves: According to this rule, certain reserves should only be eligible for inclusion in own funds in relation to the risks they cover. We agree with CEIOPS view, which is aligned with a market-consistent balance sheet valuation. Nevertheless, it raises various issues given (i) the complexity to determine the specific risk covered, (ii) risk of un-harmonized treatment as insurers from different jurisdictions are treated differently. b/ Technical provisions:	Noted. Noted.

			Firstly, it raises issues in some territories and requires further clarification since these requirements may raise a very worrying development for some businesses where regulatory surrender values are imposed. Secondly, excluding from Tier 1 the difference between the technical provisions calculated economically on a going concern basis and the amount that would have to be paid to policyholders on winding up with no transfer of the portfolio would appear to be "forcing" the economic reserve to be set for all practical purposes equal to the statutory surrender value if greater. This is a restriction that was previously correctly dropped from the QISs. The technical provisions already take account of the surrender value risk in the stochastic modelling with policyholder behaviour so it would be inconsistent and non-economic to bring in the limitation proposed. c/ DTA: See also our comment on §3.197 d/ Intangible Assets: See also our comment on §3.199, and §3.101 on profit at inception (VIF)	Noted. Noted. Noted.
1,031.	European Union member firms of Deloitte Touche To	3.195.	Restricted reserves We suggest that more detail is required on the basis under which restricted reserves are to only be included in eligible own funds in relation to specific risks. For example, if such a specific risk is included in MCR/SCR, would such a restricted reserve be restricted to the amount included in the MCR/SCR for that specific risk with the excess excluded from own funds? Paragraph 3.195 notes that "the difference between technical provisions calculated in accordance with Articles 74 to 85, that is on a going concern basis, and the amounts that the original undertaking shall have to pay to its policyholders to honour their	Noted

			rights in the case of a winding up with no transfer of portfolios" shall be excluded from Tier 1 and included in Tier 3 eligible own funds. This advice would appear to mean that in certain circumstances it would be necessary to determine a liability greater than going concern best estimate of insurance liabilities and thus classify the difference as Tier 3 not Tier 1 eligible own funds. We suggest that this advice requires more detail in order to better understand the circumstances in which any such adjustment may be required and nature and possible quantification of any such adjustment between Tier 1 and Tier 3 eligible own funds.	
1,032.	FFSA	3.195.	The CP indicates that the following are excluded: - reserves such as statutory reserves, legal reserves, depending on the risks they cover - difference between technical reserves at best estimate vs. amount to be paid to policyholders in case of winding up (tier 3) - deferred tax assets (whether 0 recognition, or tier 3 for deferred taxes to be used after a 12-months period) - intangible assets We strictly disagree with these exclusions. For the statutory, legal or equalisation reserves, some tolerance and flexibility should be given on a case-by-case basis, in discussion with the local supervisor, these reserves being based on national legislation (e.g. reserve de capitalisation in France). We recommend to take into account these own funds in tier 1, depending if they are recognised under IFRS under net asset value. With respect to the difference in technical reserves, we consider it	Noted

			to be burdensome to calculate the amounts to be paid to policyholders in case of winding up. We do not see any point in not recognising the technical reserves at their best estimate in order to determine the net asset value. Also, FFSA questions the treatment suggested for the difference between Best Estimate and the amount to be paid in case of winding-up (FFSA's interpretation is the local GAAP technical reserve), ie. To be part of Tiers 3 own funds, for the following reasons: • As this amount is included in the difference between assets and liabilities, the Directive states that it is basic own funds, • For life insurance, it has been seen during the QIS 4 that generally the Best Estimate (which included part of the unrealized gains) is higher that local GAAP technical reserves. If this amount is disconnect to unrealized capital gains or losses, it will lead to Tiers 3 own funds negatives. • There is a risk of taking into account changes on this value (in the mass lapse risk module for instance) in the SCR calculation without recognize it in eligible elements (if the 15% threshold is touched). FFSA question the consistency of this statement. For those raisons FFSA recommends to recognize this element as Tiers 1 capital. We agree that there should not be any double counting on deferred tax between own funds and SCR calculation. However, we consider that deferred taxes should be fully recognised as tier 1, as long as it is probable that they will be recoverable, in accordance with IAS 12. As such, we do not agree with the cap at 12 months, as stated in 3.197. For the intangible assets, at the exception of the value of business	

			acquired, we consider that the amounts recognised under the IFRS framework should be used under Solvency II. As discussed on §3.101-102, CEIOPS has not concluded on the treatment of profit at inception in own funds, in particular, whether all profit at inception should be included in the excess of assets over liabilities. CEIOPS is also waiting for IASB deliberations. FFSA considers these profits at inception should be included in tier 1 eligible own funds, as they correspond to an economic value, which is the basis for Solvency II. AS such, FFSA recommends including this treatment in the CP – level 2 application guidance.	
1,033.	German Insurance Association – Gesamtverband der D	3.195.	Only when liabilities have an economic value should they be included in the Solvency II market consistent valuation of liabilities (see CP35). Article 87 of the Framework Directive requires that Solvency II is based on a holistic balance sheet approach where assets and liabilities are valued on a market consistent basis and whereby the excess of these assets over liabilities are part of own funds. Failing to adopt such an approach and instead assessing own funds based on national balance sheet reporting requirements is the wrong approach. Only when liabilities have an economic value should they be included in the Solvency II market consistent valuation of liabilities (see CP35). To the extent net deferred tax assets are valued on a market consistent basis and are subordinated to policyholder liabilities they should be accounted for in Tier 1. (We note that the provision here is in contradiction with the provision in 3.197) When liabilities do not have any economic value, typically because they are motivated by national arbitrary reporting requirements, they should NOT be accounted for under Solvency II and should	Noted

			therefore implicitly fall in the own funds balancing item of retained earnings and P/L which is Tier 1 capital. In some Members States this may be typically the case for the so called "legal" and "statutory" reserves. Any differences in the technical provisions calculated under Solvency II and under national accounting rules should be part of the Solvency II equity balancing item to the extent market consistent technical liabilities are by definition reflecting the economic value of policyholders' liabilities under transfer or settlement approach assumption (art 74). This is typically the case of "equalisation reserves" which would already be partly accounted for in the market consistent value of technical liabilities (on expected value basis + MVRM). The remaining part of what is called under national accounting rules "equalisation reserves" is therefore part of the excess of assets and should therefore be accounted for in Tier 1. Double counting of risks should be avoided. According to CEIOPS, certain reserves (e.g. equalization reserves) should "only be eligible for inclusion in own funds in relation to the risks they cover". This restriction should be reviewed and potentially omitted, due to the following reasons: 1) Complexity is significantly increased, especially determination of covered risks (i.e. to which extent they are included) will be difficult and it is unclear to which extent diversification effects are considered (e. g. included up to the undiversified risk or only up to the (group) diversified risk which would be more burdensome). 2) Level playing field is not given as insurers from different jurisdictions are treated differently 3) In addition, we see this restriction as redundant (or maybe even	

			inconsistent) to the more detailed requirements regarding "fungibility" and "transferability" of own funds as specified in CP 60 4) Without a definition of "ring-fenced funds" we can not assess the need or degree of alignment of the treatment of certain reserves with the approach for ring-fenced funds (in QIS4). Equally, to the extent that intangible assets have an economic value and have been allocated capital requirements under the SCR, they should be recognised as Tier 1 capital. (We note that the provision here is in contradiction with the one in 3.199). We are strongly concerned and disagree with what CEIOPS calls the "winding-up gap" which is probably based on a misunderstanding of what the Framework Directive is trying to achieve. The requirement however seems to be implying that the Solvency II policyholder liabilities are not reflecting the amount at which policyholder liabilities would have to be settled in the case of a winding up. This is misleading and probably based on a misunderstanding of what article 74 of the Framework Directive is trying to achieve. As CEIOPS is acknowledging in its advice, under Solvency II assets and liabilities are to be valued on ongoing concern basis. We therefore do not understand how CEIOPS then goes on to discuss policyholders' liabilities under a winding basis when it acknowledges that this is clearly contradictory to the Framework Directive. There is no evidence why the value of policyholders' liabilities is higher in a winding-up case than in ongoing concern basis. The risk of lapses and surrenders being higher than anticipated in a winding-up is captured by the SCR lapse risk. Risks should not be double counted between what is allowed for in the in the market consistent values of a Solvency II balance sheet and the adverse 1/200 year event scenario covered by the SCR.	

			We would also like to point out that technical provisions under Solvency II are made of the sum of Best Estimate + Market Value Risk Margin, meaning that there is already an additional margin above policyholders' liabilities calculated on best estimate basis. Typically, for life insurance in some markets, it has been seen during the QIS 4 that generally the Best Estimate is higher that local GAAP technical reserves. Typically, this difference would fall in the excess of assets over liabilities which is Tier 1. Calculations needed for determining the "winding-up gap" would be burdensome because a whole balance sheet for insolvency purposes (winding up valuation basis according national insolvency law) would have to be prepared. We note that nothing similar was tested under QIS4. Such a new concept, if introduced, would have to be tested in full, taking into account the tier 3 limit. CEIOPS should not depart from the requirements in the Level I text We think that the wording "available to absorb losses at any time from any segment of liabilities or from any risk" deviates from the characteristic of "permanent availability" which has to be met substantially. Alignment with the Level I text is desirable: "Reserves, to the extent that they are available to absorb losses ~~at any time~~ permanently ~~from any segment of liabilities~~ or from ~~any~~ risks substantially, as and where they occur,"	
1,034.	Groupe Consultatif	3.195.	This excluded "certain" equalisation reserves. This will be a major issue for several countries. However, when looking at the directive text, it might be difficult to argue that equalisation reserves could be Tier 1 as long as there are restrictions with the use of these reserves. This however comes back to whether Tier 1 own funds fulfil "fully" or "substantially" the requirements (a) and (b) of Article	Noted

			93. If "substantially" is retained and if in the wind-up situation equalisation reserves would cover all losses, we have the feeling that equalisation reserves in the form in for example Finland should be part of Tier 1. Otherwise we could have as a result really rich bankruptcies. For Germany, it is specific unallocated and not guaranteed parts of the reserve for future policyholders' benefits ("RfB") that should be tier 1. The use of "substantially" would suffice to allow this classification. In many German life companies, (shareholder) equity covers less than 25 % of Solvency I requirements, so RfB is essential.	
1,035.	Investment & Life Assurance Group (ILAG)	3.195.	See our comments under 3.96. We believe that a "winding up test" would require a completely different solvency assessment.	Noted. See comment 526
1,036.	KPMG ELLP	3.195.	We agree with the items in this list, subject to our comments in 3.100	Noted
1,037.	Legal & General Group	3.195.	Deferred tax assets should not be wholly excluded from own funds and should be considered along with feedback from CP35. The focus here appears to be on value on 'winding up' rather than value to the company as a going concern. We believe that the deferred tax asset should be included to the extent that it can be shown to be recoverable on a going concern basis. We believe this is justified because in the event of insolvency of the firm, any purchaser of the fund is likely to be a going concern itself, and is likely to be able to value the deferred tax asset on this basis.	Noted
1,038.	Lloyd's	3.195.	Sub-paragraph b (exclusions) – under Solvency II technical provisions are set on an economic basis as a going concern. The capital requirement to cover losses up to a 99.5% VaR outcome is	Noted

			addressed through the SCR calculation. It is clearly wrong effectively to disallow the difference between technical provisions on a run-off basis compared with those set on the going concern basis as Tier 1 assets; this would effectively require the whole of the European insurance industry to be reserving on a run-off basis which is nonsensical and would be extremely damaging to its global competitiveness. We propose that this requirement is deleted.	
1,039.	Munich RE	3.195.	The economic approach under Solvency II has to be applied consistently through the calculation of SCR and available own funds. It must not be mixed up with the existing laws and restrictions under national accounting which correspond to non-economic values. Article 93 (1) talks about the general “availability to fully absorb losses”. Solvency II has a holistic balance sheet approach, and does not allocate valuation adjustments to its sources. This principle has to be adopted consistently otherwise the hole system will be mislead. At the same time starting from a pure accounting perspective contradicts the idea of an harmonised approach of own funds across Europe, does not create a level playing field and distorts competition in the Single Market. The total balance sheet approach reflects a correct economic view and should therefore be independent of national accounting or taxation rules. The following items should not be excluded from Tier 1 a) reserves, the use of which is restricted The assumption that equalisation reserves are restricted in use is not correct when discussing solvency issues. As a rule, equalisation reserves will be used up before an entity will enter into insolvency. Their use for this purpose is possible as they do not constitute a	Noted

			liability to third parties. This way they are going to be used also in going concern: namely to prevent insolvency. This mechanism makes them loss absorbent to any risk of the company. Equalisation reserves serve the stabilization of the industry. Years of low combined ratios will result in high equalisation reserves and thus will disadvantage companies from countries that know the mechanism of equalisation reserves against those that don't. That means Solvency II would make equalization reserves a bad thing. Finally the new economic approach leads to a three times higher SCR in average for German P&C-insurers as QIS4 results showed. A relevant part of this increase is due to an economic view on Cat-risks which is not the case under existing static Solvency I rules. As a consequence the total amount of the excess of assets over liabilities of an economic balance sheet in Solvency II is available capital to cover the SCR in an economic valuation approach. Also equalisation reserves are partly accounted for in the market consistent value of technical liabilities (on expected value basis plus MVRM). The proposed reduction of basic own funds amounting to the volume of local GAAP based reserves (valuation differences) mixes economic concepts and national legislation. At the same time it punishes catastrophe insurance twice: once through requiring Cat-SCR, twice by taking away economic own funds. However, we note that the way equalisation reserves are recognised differs from country to country. We think that the issue is too complex to be considered globally. We therefore advise to leave it to Level III to decide which kind of reserves should be excluded from Tier 1. National supervisors shall decide on the basis of national legislation. b) winding-up gap	

			The notion of winding-up gap is new and not appropriate. It contradicts the economic balance sheet approach. In a winding up the insurance company will resolve or transfer its liabilities at economic values, the so called winding- up gap will be nil. c) Deferred tax assets Only net deferred tax assets (deferred tax assets – deferred tax liabilities > nil) can be questioned to be available in a winding up. Deferred tax assets which can be set off by deferred tax liabilities must be part of Tier 1 capital. Net deferred tax assets have to be classified at Tier 1 to the extent that they are recoverable.	
1,040.	OAC Actuaries and Consultants	3.195.	See our comments under 3.96. We believe that a "winding up test" would require a completely different solvency assessment.	Noted. See comment 529
1,041.	Pacific Life Re	3.195.	Our response to 3.96 includes suggested alterations to the wording in this section.	Noted. See comment 529
1,042.	Pearl Group Limited	3.195.	Solvency II is based on a holistic balance sheet approach (Article 87). Therefore, to the extent net deferred tax assets are valued on a market consistent basis and are subordinated to policyholder liabilities they should be accounted for in Tier 1. Equally, to the extent that intangible assets have an economic value and have been allocated capital requirements under the SCR, they should be recognised as Tier 1 capital. Similarly, any differences in the technical provisions calculated under Solvency II and under national GAAP should be part of the Solvency II equity balancing item to the extent market consistent technical liabilities are by definition reflecting the economic value of policyholders' liabilities under transfer or settlement approach assumption (art 74). This is typically the case of equalisation	Noted

			reserves which would already be partly accounted for in the market consistent value of technical liabilities (on expected value basis + risk margin). The "remaining part of equalisation reserves" is therefore part of the excess of assets and should therefore be accounted for in Tier 1.	
1,043.	RBSI	3.195.	Excluded part c). Deferred tax assets: this approach looks harsh given the nature of the asset. More clarity is also required in the case that the asset can be transferred. Further, any differences in the technical provisions calculated under Solvency II and under national GAAP should be part of the Solvency II equity balancing item to the extent market consistent technical liabilities are by definition reflecting the economic value of policyholders' liabilities under transfer or settlement approach assumption (art 74). This is typically the case of equalisation reserves which would already be partly accounted for in the market consistent value of technical liabilities (on expected value basis + risk margin). The "remaining part of equalisation reserves" is therefore part of the excess of assets and should therefore be accounted for in Tier 1.	
1,044.	ROAM –	3.195.	The CP indicates that the following are excluded: - reserves such as statutory reserves, legal reserves, depending on the risks they cover - difference between technical reserves at best estimate vs. amount to be paid to policyholders in case of winding up (tier 3) - deferred tax assets (whether 0 recognition, or tier 3 for deferred taxes to be used after a 12-months period) - intangible assets We strictly disagree with these exclusions. For the statutory, legal or equalisation reserves, some tolerance	Noted

			and flexibility should be given on a case-by-case basis, in discussion with the local supervisor, these reserves being based on national legislation (e.g. reserve de capitalisation in France). We recommend to take into account these own funds in tier 1, not depending if they are recognised under IFRS under net asset value or not, because many mutuals are not subject to IFRS. With respect to the difference in technical reserves, we consider it to be burdensome to calculate the amounts to be paid to policyholders in case of winding up. We do not see any point in not recognising the technical reserves at their best estimate in order to determine the net asset value. Also, ROAM questions the treatment suggested for the difference between Best Estimate and the amount to be paid in case of winding-up (ROAM's interpretation is the local GAAP technical reserve), ie. To be part of Tier 3 own funds, for the following reasons: • As this amount is included in the difference between assets and liabilities, the Directive states that it is basic own funds, • For life insurance, it has been seen during the QIS 4 that generally the Best Estimate (which included part of the unrealized gains) is higher that local GAAP technical reserves. If this amount is disconnect to unrealized capital gains or losses, it will lead to Tier 3 own funds negatives. • There is a risk of taking into account changes on this value (in the mass lapse risk module for instance) in the SCR calculation without recognition in eligible elements (if the 15% threshold is reached). ROAM questions the consistency of this statement. For those raisons ROAM recommends to recognize this element as Tier 1 capital.	

			For the intangible assets, at the exception of the value of business acquired, we consider that the amounts recognised under the IFRS framework should be used under Solvency II.	
1,045.	UNESPA (Association of Spanish Insurers)	3.195.	See 3.199	
1,046.	AMICE	3.196.	We agree with this paragraph.	Noted
1,047.	CEA, ECO-SLV-09-441	3.196.	We would welcome examples of assets which do not fit these criteria and are not listed above to better understand which assets are targeted here.	Noted
1,048.	CFO	3.196.	Comments in 3.98, 3.100, 3.190, and 3.195 are also relevant here.	Noted
1,049.	CRO Forum	3.196.	We would welcome examples of assets which do not fit these criteria (i.e the excess of assets over liabilities which do not fully absorb losses in going concern) and which are not listed in §3.195 to better understand which assets are targeted here.	Noted
1,050.	FFSA	3.196.	"The components of the excess of assets over liabilities which do not fully Absorb losses in going concern should not be classified in Tier 1." We would welcome examples of assets which do not fit these criteria and are not listed above to better understand which assets are targeted here.	Noted
1,051.	German Insurance Association – Gesamtverb	3.196.	We would welcome examples of assets which do not fit these criteria and are not listed above to better understand which assets are targeted here.	Noted

	and der D			
1,052.	Association of British Insurers	3.197.	We disagree with option 1 which assumes that deferred tax assets have no value under a stress or in a winding up situation and therefore should be rejected. Even under a stress or in winding-up situation tax assets have an economic value. Indeed, under a transfer assumption for example, a third party may recognise a value in the tax assets of the undertaking to the extent it may use them to offset its tax liabilities or foreseeable taxable profits. We agree with option 2, but we believe, all tax assets are either transferable or at least usable in a settlement approach. Indeed, it seems that CEIOPS is taking an item by item winding-up transfer assumption whereby deferred taxes may not be transferable on an item by item basis in an arm' length transaction to a third party. As indicated previously, we do not believe that this assumption is in line with art 74 which also refers to a settlement assumption which in all cases would mean that tax assets would also have a value if the portfolio is simply put in into run-off.	Noted
1,053.	ASSOCIATIO N OF FRIENDLY SOCIETIES	3.197.	We also disagree with the finding on deferred tax assets. Again, this is imposing a winding up solvency test where the Directive states that the solvency assessment should be carried out on a going concern basis.	Noted
1,054.			Confidential comment deleted	
1,055.	CEA, ECO-SLV-09-441	3.197.	Tax assets have a value both on an ongoing concern and winding up basis. Option 1 is based on the wrong assumption that taxes have no value under a stress or in a winding up situation and therefore should be rejected. Even under a stress or in winding-up situation tax assets have an economic value. Indeed, under a transfer assumption for example, a third party may recognise a value in the	Noted

			tax assets of the undertaking to the extent it may use them to offset its tax liabilities or foreseeable taxable profits. We agree with option 2, but we believe that all tax assets are either transferable or at least usable in a settlement approach. Indeed, it seems that Ceiops is here again taking an item by item winding-up transfer assumption whereby deferred taxes may not be transferable on an item by item basis in an arm' length transaction to a third party. As indicated previously, we do not believe that this assumption is in line with art 74 which also refers to a settlement assumption which in all cases would mean that tax assets would also have a value if the portfolio is simply put in into run-off. All tax assets should qualify as Tier 1.	
1,056.	CFO	3.197.	Comments in 3.100 and 3.190 are also relevant here.	Noted
1,057.	CRO Forum	3.197.	According to this rule, DTA should be excluded from own funds entirely or classified in Tier 3. We disagree with this view. If the DTA are assessed as recoverable, they should be included in own funds. In addition, an assessment of DTA has limited use, as the DTA and the DTL should be assessed in combination. For further details, see the respective comments on CP 35 "valuation of other assets and liabilities", e.g. by the CRO Forum and CFO forum.	Noted
1,058.	Danish Insurance Association	3.197.	Tax assets and liabilities should be treated like any other asset and liability in respect of the directive stipulating the going concern principle to be used (article 101 2).	Noted
1,059.	Danish Insurance Association	3.197.	See 1058	Noted
1,060.	European Union	3.197.	Deferred tax assets	Noted

	member firms of Deloitte Touche To		We would support the inclusion of deferred tax assets meeting the IAS12 recognition criteria (probable that future taxable profits will be available to utilise the deferred tax assets) as eligible own funds. However, where the utilisation of a deferred tax asset depends on future taxable profits we suggest that it should be classified as Tier 3 eligible own funds. Where deferred tax assets can be transferred to another entity, we suggest that the expected transfer value may be classified as Tier 1 eligible own funds. We do not support the wording of paragraph 3.197 which appears to indicate that deferred tax assets dependent on future profits expected to be realised within 12 months may be included in Tier 1 eligible own funds. Paragraph 3.197 does not appear consistent with paragraphs 3.195 and 3.100 which state that deferred tax assets should either be excluded from eligible own funds or classified as Tier 3 eligible own funds.	
1,061.	FFSA	3.197.	We prefer option n^{O}2. However we still do feel uncomfortable with the underlining principle to justification of Tier 1 that only those resources that will be available in the case of winding-up with no transfer can be classified as Tier 1 as the undertaking will operate as a going concern.	Noted
1,062.	German Insurance Association – Gesamtverb and der D	3.197.	Tax assets have a value both on an ongoing concern and winding up basis Option 1 is based on the wrong assumption that taxes have no value under a stress or in a winding up situation and therefore should be rejected. Even under a stress or in winding-up situation tax assets have an economic value. Indeed, under a transfer assumption for example, a third party may recognise a value in the tax assets of the undertaking to the extent it may use them to	Noted

			offset its tax liabilities or foreseeable taxable profits. We agree with option 2, but we believe that all tax assets are either transferable or at least usable in a settlement approach. Indeed, it seems that CEIOPS is here again taking an item by item winding-up transfer assumption whereby deferred taxes may not be transferable on an item by item basis in an arm' length transaction to a third party. As indicated previously, we do not believe that this assumption is in line with art 74 which also refers to a settlement assumption which in all cases would mean that tax assets would also have a value if the portfolio is simply put in into run-off. All tax assets should qualify as Tier 1.	
1,063.	Investment & Life Assurance Group (ILAG)	3.197.	We also disagree with the finding on deferred tax assets. Again, this is imposing a winding up solvency test where the Directive states that the solvency assessment should be carried out on a going concern basis.	Noted
1,064.	KPMG ELLP	3.197.	See 3.100	Noted
1,065.	Munich RE	3.197.	Deferred tax assets for loss carry-forwards should certainly be considered recoverable in a solvency balance sheet if the total of deferred tax liabilities exceeds the deferred tax assets for the respective tax subject. In this case a loss carry-forward would be used in an assumed liquidation, and would thus be recoverable. As long as deferred tax liabilities exceed deferred tax assets, deferred tax assets qualify for Tier 1. We therefore request discussing the recoverability of NET deferred tax assets only.	Noted
1,066.	OAC Actuaries and Consultants	3.197.	We also disagree with the finding on deferred tax assets. Again, this is imposing a winding up solvency test where the Directive states that the solvency assessment should be carried out on a going concern basis.	Noted

1,067.	Pearl Group Limited	3.197.	We disagree with option 1 which assumes that taxes have no value under a stress or in a winding up situation and therefore should be rejected. Even under a stress or in winding-up situation tax assets have an economic value. Indeed, under a transfer assumption for example, a third party may recognise a value in the tax assets of the undertaking to the extent it may use them to offset its tax liabilities or foreseeable taxable profits. We agree with option 2, but we believe, all tax assets are either transferable or at least usable in a settlement approach. Indeed, it seems that CEIOPS is taking an item by item winding-up transfer assumption whereby deferred taxes may not be transferable on an item by item basis in an arm' length transaction to a third party. As indicated previously, we do not believe that this assumption is in line with art 74 which also refers to a settlement assumption which in all cases would mean that tax assets would also have a value if the portfolio is simply put in into run-off. All tax assets should qualify as Tier 1.	Noted
1,068.	UNESPA (Association of Spanish Insurers)	3.197.	Deferred taxes have an economic value in any case so they should be consider as eligible own funds Given that the deferred taxes can have a big impact on the sale price traded in transactions between companies, and even in some cases, transactions are carried out to seize the opportunity to offset losses with asset taxes, it is clear that these assets have an economic value, even in adverse situations, and therefore they should be considered as eligible capital, that can be used by undertakings to absorb losses.	Noted
1,069.	CFO	3.198.	Comments in 3.190 are also relevant here.	Noted
1,070.			Confidential comment deleted	
1,071.	CFO	3.199.	Comments in 3.190 are also relevant here.	Noted

1,072.	CRO Forum	3.199.	The valuation of intangibles is already addressed in CP35, and should not be subject to further restriction under CP46. In the case where intangibles are given a value, then the requirement to disallow them from own funds if they don't attract a capital charge seems inappropriate, e.g. if a capital charge of nil has been deemed appropriate because the asset carries negligible risk, then this should be fully allowed for own funds	Noted
1,073.	UNESPA (Association of Spanish Insurers)	3.199.	Goodwill with economic value should be consider as eligible own funds As we said in other CPs (CP 35, CP 60), we understand that goodwill are assets that have an economic value, and therefore they should not be excluded form the solvency regulation as eligible assets to cover capital requirements, as indicated in Section 3100 d) and 3195 d). Regarding section 3.227 no inconsistencies were identified by CEIOPS in relation with the consistency analysis with the IAS own funds statements. Therefore, we understand that assigning a nil value to goodwill is inconsistent with the economic and accounting principles (in which the deterioration level is assessed, and if no deterioration is identified, its value will be different than zero), and because of that, this aspect should be reconsidered. Omitting to this concept in Solvency II, could lead to a very strong impact on undertakings solvency position which should be avoided. Therefore in the list of elements which are excess of assets over liabilities, but not considered own funds items due to their limited loss absorption capacity, accomplished by CEIOPS, (see 3.96 d)), we believe that a greater depth analysis should be made in relation to the goodwill limitations.	Noted
1,074.	AMICE	3.200.	See our comments to paragraph 3.195.	Noted

1,075.	Association of British Insurers	3.200.	See comments under 3.170 – Loss absorbency	Noted
1,076.	CEA, ECO-SLV-09-441	3.200.	The requirement to absorb losses first and rank pari passu with shareholders capital is not in line with the Level 1 text which only requires subordination to policyholders' claims and to other senior investors. Furthermore, there should not be any de facto restriction on how undertakings absorb losses as this would depend on each case.	Noted
1,077.	CFO	3.200.	Comments in 3.170 and 3.190 are also relevant here.	Noted
1,078.	German Insurance Association – Gesamtverband der D	3.200.	The requirement to absorb losses first and rank pari passu with shareholders capital is not in line with the Level 1 text which only requires subordination to policyholders' claims and to other senior investors. Furthermore, there should not be any de facto restriction on how undertakings absorb losses as this would depend on each case.	Noted
1,079.	KPMG ELLP	3.200.	We agree with the items in this list and point out that called up share capital would normally be recorded as a debtor and initially contribute to the excess of assets over liabilities. For the sake of clarity, we think this should be included in the list of exclusions in paragraph 3.195 of the CP.	Noted
1,080.	Moody's Investors Service	3.200.	In Moody's view, the hybrid characteristics described here are consistent with some degree of equity credit using our own methodology because of the limited incentive to redeem, the non-cumulative coupon payments, and subordination.	Noted
1,081.	Munich RE	3.200.	b. absorb losses first or rank pari passu …… => it is not acceptable for hybrid investors to bear losses pari passu with shareholders (see also 3.170) In addition this requirement is not in line with the Directive.	Noted

1,082.	Pearl Group Limited	3.200.	See comments under 3.170 – Loss absorbency	Noted
1,083.	Association of British Insurers	3.201.	Sufficient duration See comments under 3.191 Free from requirements or incentives to redeem Moderate step up allowed needs defining. This should be aligned with QIS 4, i.e. 100bps or 50% of initial credit spread. Free from mandatory fixed charges See comments under 3.170 Absence of encumbrances See comments under 3.191	Noted
1,084.			Confidential comment deleted	
1,085.	BNP PARIBAS	3.201.	ii Loss absorbency: we believe that loss absorbency is not a defining feature of the instrument, but rather the product of the combination on the various features (subordination, lock-in of repayment and payment deferral). We believe this point should therefore be deleted from that section iv Incentive to redeem: CEIOPS should provide clear guidance on what is an acceptable incentive to redeem to ensure a level playing field. We believe that banking rules are a good reference point v Deferral of coupon: we would suggest dividend pushers should be allowed to ensure that Tier 2 holders are paid back when equity investor receive dividend again. Also payment should be due in full upon redemption.	Noted
1,086.	CEA,	3.201.	We believe that there is no substantial difference between tiers 1	Noted

	ECO-SLV-09-441		and tiers 2 capital. Sufficient duration Please See comments to 3.191 on duration linked to liabilities and contractual lock-ins. Free from requirements or incentives to redeem Clearer guidance in level 2, on under which conditions supervisors may refuse redemption is required. We understand as "moderate incentives", step-up features which do not qualify for tier 1 as defined in or comment to 3.191. Furthermore, we note that it is required that any redemption should be subject to the approval of the supervisory. We have strong concerns of how this would work in practice when the capital instrument has a legal maturity, or a call date. In particular, we do not understand why redemptions which have been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-approval. Also, we consider that in case the breach is corrected, the undertaking should not have to ask for an approval to start paying coupons/dividends again. Free from mandatory fixed charges Trigger points should be set at the MCR level. (See comments on 3.170). Absence of encumbrances We want to ensure of the meaning of "financing" in this sentence, and verify under which circumstances this net financing would be considered. In no case, Financing should cover investment by the undertaking in equity or bonds (or other capital instruments) of the investor. This would be an adverse change compared to current	

			situation. One has to bear in mind that for insurance companies, investments are backing mainly technical liabilities, which cannot be comparable to the banking sector's liability side of the balance sheet. Furthermore, insurers may own minority participation in banks that grant loans to or buy securities from the insurer at arms' length. Only very specific transactions and cases shall be included here. We would recommend limiting the absence of encumbrance to the situation where the insurer is in breach of its SCR.	
1,087.	CFO	3.201.	Clear guidance to explain the conditions under which supervisors could refuse redemption is requested. Comments in 3.33, 3.63, 3.183 and 3.190 are also relevant here.	Noted
1,088.			Confidential comment deleted	
1,089.	CRO Forum	3.201.	We are globally aligned with most considerations for Tier 2 since it is in line with LT2 instruments. Further clarification is needed around the requirement to absorb losses. On 3.201ii Loss absorbency - It is unclear how an item which is not fully paid-in can be loss absorbing. On 3.201.v Free from mandatory fixed charges – see also our comment on 3.191 xviii with respect to Tier 1; mandatory coupon deferral is extremely harsh for Tier 2 instruments in general. We do not agree with the proposal that deferred coupons/dividends should only be paid "subject to the consent of the supervisory authority". As outlined above, we consider it unnecessary to make the repayment of dated capital instruments dependent on regulatory approval, provided the issuer is solvent and meets its regulatory capital requirements. The same applies to deferred interest. Note	Noted

			also that the definition of "indefinite term" for which the coupon can have several meanings, it is unclear what is implied by this indefinite in the advice.	
1,090.	FFSA	3.201.	We agree with most considerations for Tier 2 since it is in line with LT2 instruments. We would recommend limiting the absence of encumbrance to the situation where the insurer is in breach of its SCR. Nevertheless, we believe that there is no substantial difference between tiers 1 and tiers 2 capital. The difference between loss absorbency in a winding up situation only and loss absorbency in a "going concern" situation seems very difficult to establish. The paragraph iv mentions "moderate incentives". FFSA recommends that the CP or level 3 guidance gives more precision on the moderate incentive meaning. Moreover, as indicated before, a redemption at a call date should not be subject to the approval of the supervisor, since this was mentioned during the first approval phase. Also, FFSA considers that in case the breach is corrected, the undertaking should not have to ask for an approval to start paying coupons/dividends again. The paragraph vi mentions "Where an investor subscribes for capital in an undertaking and at the same time that undertaking has provided financing to the investor, only the net financing provided by the investor is considered as eligible own funds" We want to ensure of the meaning of "financing" in this sentence, and verify under which circumstances this net financing would be considered. In no case, Financing should cover investment by the undertaking in equity or bonds (or other capital instruments) of the investor. This would be an adverse change compared to current situation. One has to remind that for insurance companies,	Noted

			investments are representing technical liabilities, which can not be comparable to bank activity. Furthermore insurers may own minority participation in banks that grant loans to or buy securities from the insurer at arms' length. Only very specific transactions and cases shall be included here.	
1,091.	FRIENDS PROVIDENT	3.201.	We have hybrid capital that is not redeemable, except after a specified date, with the regulator's permission, at the option of the company. At that date there is a step up of the interest rate, should we choose not to redeem. This capital is currently 'Innovative Tier 1'. We do not know which tier this capital would fall into, as the paper does not make proposals regarding permissible 'step-ups' within each tier. However, suppose the step-up exceeded the maximum requirement for tier 1 or 2. Provided that the term meets the 'sufficient duration' requirement, it is possible to construct a similar dated instrument, with maturity at the date of step up, of higher tier than our hybrid capital, that is less absorbent, since it forces the company to repay at the maturity date (unless the SCR is breached), and does not give the regulator the right to prevent this. This anomaly highlights the penal treatment of capital with incentives to redeem.	Noted
1,092.	German Insurance Association – Gesamtverb and der D	3.201.	We believe that there is no substantial difference between tiers 1 and tiers 2 capital. Sufficient duration Please see comments to 3.191 on duration linked to liabilities and contractual lock-ins. Free from requirements or incentives to redeem Clearer guidance in level 2, on under which conditions supervisors may refuse redemption is required. We understand as "moderate incentives", step-up features which	Noted

			do not qualify for tier 1 as defined in or comment to 3.191. Furthermore, we note that it is required that any redemption should be subject to the approval of the supervisory. We have strong concerns of how this would work in practice when the capital instrument has a legal maturity, or a call date. In particular, we do not understand why redemptions which have been contractually foreseen and pre-approved by supervisors should be subject to supervisory re-approval. Also, we consider that in case the breach is corrected, the undertaking should not have to ask for an approval to start paying coupons/dividends again. Free from mandatory fixed charges Trigger points should be set at the MCR level. (See comments on 3.170). Absence of encumbrances We want to ensure of the meaning of “financing” in this sentence, and verify under which circumstances this net financing would be considered. In no case, Financing should cover investment by the undertaking in equity or bonds (or other capital instruments) of the investor. This would be an adverse change compared to current situation. One has to bear in mind that for insurance companies, investments are backing mainly technical liabilities, which cannot be comparable to the banking sector’s liability side of the balance sheet. Furthermore, insurers may own minority participation in banks that grant loans to or buy securities from the insurer at arms’ length. Only very specific transactions and cases shall be included here. We would recommend limiting the absence of encumbrance to the situation where the insurer is in breach of its SCR.	
1,093.	Legal &	3.201.	Moderate step up allowed needs defining. Should be aligned with	Noted

	General Group		QIS 4, i.e. 100bps or 50% of initial credit spread	
1,094.	Lloyd's	3.201.	Sub paragraph ii – See comment to 3.178.	Noted
1,095.	Moody's Investors Service	3.201.	In its classification of hybrid securities, Moody's allows a moderate step-up (limited to 100 basis points over the initial credit spread) if a hybrid is not called at the call date to qualify for equity credit.	Noted
1,096.	Munich RE	3.201.	Loss Absorbency: We believe that loss absorbency is not a defining feature of the instrument, but rather the product of the combination of various features (subordination, interest deferral …). Sufficient Duration: Duration should not be linked to insurance obligations. (see also 3.183) Free from requirements or incentives to redeem: Clear guidance on the conditions under which the supervisor could refuse a redemption would be very helpful. The more clarity that can be provided on when regulators would or would be entitled to prohibit redemption, and the more remote such a scenario is, the more marketable the instrument is likely to be to hybrid capital investors. CEIOPS should provide clear guidance on what is an acceptable incentive to redeem to insure a level playing field. Moderate step-ups (=> the higher of 100bp and 50% of the initial spread) should be allowed. Free from mandatory fixed charges: Trigger Points should be set at the MCR-level, not the SCR-level. Dividend pushers should be allowed to ensure that Tier 2 holders are paid back when equity investors receive dividend again. Also payment should be due in full upon redemption.	Noted
1,097.	Pearl Group Limited	3.201.	Sufficient duration	Noted

			See comments under 3.191 Free from requirements or incentives to redeem Clearer guidance in level 2, on under which conditions supervisors may refuse redemption is required. Free from mandatory fixed charges See comments under 3.170 Absence of encumbrances See comments under 3.191	
1,098.	UBS	3.201.	See comments from 3.191.	Noted
1,099.	Association of British Insurers	3.205.	The CP should provide examples on what is meant by "free of encumbrances" for Tier 3 capital.	Noted
1,100.			Confidential comment deleted	
1,101.	CEA, ECO-SLV-09-441	3.205.	The directive does not require "effective subordination". Drafting suggestion: "… that undermine effective that the characteristic of subordination is substantially possessed."	Noted
1,102.	CFO	3.205.	Comments in 3.33 are also relevant here.	Noted
1,103.	FFSA	3.205.	FFSA suggests that the CP details some example for the mentioned absence of encumbrances.	Noted
1,104.	German Insurance Association – Gesamtverband der D	3.205.	The directive does not require "effective subordination". drafting suggestion: "… that undermine effective that the characteristic of subordination is substantially possessed."	Noted

1,105.	Moody's Investors Service	3.205.	In Moody's view, the hybrid characteristics described here are consistent with minimal equity credit using our methodology. The mandatory prohibition on redemption and coupon payments on breach of the triggers is viewed as equity-like, but the short maturity (3 years) and the lack of optional coupon deferral are viewed as debt-like.	Noted
1,106.	Pearl Group Limited	3.205.	The CP should provide examples on what is meant by "free of encumbrances" for Tier 3 capital.	Noted
1,107.	Association of British Insurers	3.206.	See comments under 3.195	Noted
1,108.	ASSOCIATIO N OF FRIENDLY SOCIETIES	3.206.	See our comments above.	Noted
1,109.	CEA, ECO-SLV-09-441	3.206.	See comments to 3.195.	Noted
1,110.	CRO Forum	3.206.	See our comment on §3.195	Noted See comment 1030
1,111.	European Union member firms of Deloitte Touche To	3.206.	Restricted reserves Paragraph 3.195 notes that by "the difference between technical provisions calculated in accordance with Articles 74 to 85, that is on a going concern basis, and the amounts that the original undertaking shall have to pay to its policyholders to honour their rights in the case of a winding up with no transfer of portfolios" shall be excluded from Tier 1 and included in Tier 3 eligible own funds.	Noted.

			As commented for para. 3.195, this advice would appear to mean that in certain circumstances it would be necessary to determine a liability greater than going concern best estimate of insurance liabilities and thus classify the difference as Tier 3 not Tier 1 eligible own funds. We suggest that this advice requires more detail in order to better understand the circumstances in which any such adjustment may be required and the nature and possible quantification of any such adjustment between Tier 1 and Tier 3 eligible own funds.	
1,112.	FFSA	3.206.	As indicated above (§3.195), we do not agree with the classification of the difference between the value of technical reserves under Directive §74 and amount to be paid to policyholders in case of winding up under tier 3, as well as the deferred taxes. FFSA considers it to be tier 1 items. Also, deferred taxes should not be limited to a one-year horizon. The amount to be accepted as tier 1 should be computed under current accounting framework (IFRS).	Noted
1,113.	German Insurance Association – Gesamtverband der D	3.206.	See comments to 3.195	Noted
1,114.	Investment & Life Assurance Group (ILAG)	3.206.	See our comments above.	Noted
1,115.	OAC	3.206.	See our comments above.	Noted

	Actuaries and Consultants			
1,116.	Pearl Group Limited	3.206.	See comments under 3.195	Noted
1,117.	AAS BALTA	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,118.	AB Lietuvos draudimas	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,119.	Association of British Insurers	3.207.	The new definition for the last category in the Ancillary Own Fund from “Any other legally binding document” to “Other capital instruments, callable on demand”, that absorb losses first e.g. Instruments that automatically convert to ordinary share capital may be more restrictive.	Noted
1,120.			Confidential comment deleted	
1,121.	CEA, ECO-SLV-09-441	3.207.	We fully support inclusion of supplementary member calls in tier 2. We acknowledge that Ceiops is not proposing an arbitrary split into tier 2 and tier 3 as in the QIS4 technical specifications. Such a split would be not in line with the Level I text. Undertakings are not free in calling supplementary member calls, but are bound to the statuary or contractual agreements with their members. We believe that the wording “that can be made on	Noted

			demand" is to be interpreted in the sense "that undertakings may have against their members, based on statuary or contractual agreements".	
1,122.	CRO Forum	3.207.	Further clarification required on what would be defined as callable in this case.	Noted
1,123.	DENMARK: Codan Forsikring A/S (10529638)	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,124.	German Insurance Association – Gesamtverb and der D	3.207.	We fully support inclusion of supplementary member calls in tier 2. We acknowledge that CEIOPS is not proposing an arbitrary split into tier 2 and tier 3 as in the QIS4 technical specifications. Such a split would be not in line with the Level I text. Undertakings are not free in calling supplementary member calls, but are bound to the statuary or contractual agreements with their members. We believe that the wording "that can be made on demand" is to be interpreted in the sense "that undertakings may have against their members, based on statuary or contractual agreements".	Noted
1,125.	Link4 Towarzystw o Ubezpieczeń SA	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,126.	NORWAY: Codan Forsikring (Branch	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier	Noted

	Norway) (991 502		1 capital and the assets also deducted resulting in double counting)	
1,127.	RSA Insurance Group PLC	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,128.	RSA Insurance Ireland Ltd	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,129.	RSA\32\45\32Sun Insurance Office Ltd.	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,130.	SWEDEN: Trygg-Hansa Försäkrings AB (516401-7799)	3.207.	d. There is no discussion of how to apply the level 1 text with regards to letters of credit and the impact is unclear. It is only the excess of assets pledged over liabilities covered that should not count as Tier 1 capital (otherwise liabilities are deducted from Tier 1 capital and the assets also deducted resulting in double counting)	Noted
1,131.	CEA, ECO-SLV-09-441	3.208.	We recommend that “highest quality” be replaced by “high quality”.	Noted
1,132.	FFSA	3.208.	This section mentions that “Ancillary own fund items classified in Tier 2 should be callable own funds of the highest quality”. We recommend that highest be replaced by high quality.	Noted

1,133.	German Insurance Association – Gesamtverband der D	3.208.	We recommend that "highest quality" be replaced by "high quality".	Noted
1,134.	Munich RE	3.208.	Highest quality should be replaced by high quality.	Noted
1,135.	Association of British Insurers	3.209.	There is no such requirement in the Framework Directive. The overriding principle should be that ancillary own funds should be able to absorb losses when called upon.	Noted
1,136.	CEA, ECO-SLV-09-441	3.209.	The provision is going beyond level 1 text. There is no such a requirement suggested by the Framework Directive. We do not understand the rationale behind this recommendation. The overriding principle should be that AOF should be able to absorb losses when called upon.	Noted
1,137.	German Insurance Association – Gesamtverband der D	3.209.	The provision is going beyond level 1 text There is no such a requirement suggested by the Framework Directive. We do not understand the rationale behind this recommendation. The overriding principle should be that AOF should be able to absorb losses when called upon.	
1,138.	Munich RE	3.209.	This provision goes beyond level 1 text.	Noted
1,139.	Pearl Group Limited	3.209.	The provision is going beyond level 1 text There is no such requirement in the Framework Directive. The overriding principle should be that ancillary own funds should be able to absorb losses when called upon.	Noted
1,140.	Munich RE	3.210.	Tier 1 should be replaced by own funds.	Noted

1,141.	AMICE	3.211.	6.	
1,142.			Confidential comment deleted	
1,143.	CEA, ECO-SLV-09-441	3.211.	The list of tier 3 ancillary own funds should not include instruments classified in tier 2. Delete in a) + b): "~~in Tier 2 or~~"	Noted
1,144.	CRO Forum	3.211.	Further clarification required on what would be defined as callable in this case.	Noted
1,145.	German Insurance Association – Gesamtverband der D	3.211.	The list of tier 3 ancillary own funds should not include instruments classified in tier 2. delete in a) + b): "~~in Tier 2 or~~"	Noted
1,146.	Association of British Insurers	3.212.	• Supervisory approval is only applicable to items not covered by the list of own funds according to Article 97. • Delete "assessment and": according the Level I text the assessment has to be done by the company; only the classification is subject to approval by the supervisory authority • Replace "requires supervisory judgement" by "requires clear criteria"	Noted
1,147.	ASSOCIATION OF FRIENDLY	3.212.	One wonders whether the assessment is necessary for ordinary share capital and for the estate built up in the firm.	Noted

	SOCIETIES			
1,148.			Confidential comment deleted	Noted
1,149.	CEA, ECO-SLV-09-441	3.212.	Supervisory approval is only applicable to items not covered by the list of own funds according to Article 97. According the Level I text the assessment has to be done by the company; only the classification is subject to approval by the supervisory authority. Delete: "~~assessment and~~" Replace: "requires ~~supervisory judgement~~" by "requires clear criteria"	Noted
1,150.	CFO	3.212.	Supervisory approval is only required for classification and not assessment. The paragraph should be amended to reflect the stance adopted in level 1. The level 2 implementing measures suggest that both the assessment and classification requires supervisory approval. However in the level 1 text, the assessment is performed by the company and only the classification is subject to approval. There is no justification for the change in process. We recommend reverting back to the level 1 stance; the words "assessment and" should be removed and "requires supervisory judgement" should be replaced by "requires clear criteria". Further, supervisory approval is only required for items not covered by the list of own funds according to Article 97. This should be clarified in the text.	Noted
1,151.	CRO Forum	3.212.	It is not clear in the case of Groups who will be responsible for supervisory approval in different territories – local regulator or the group regulator?	Noted
1,152.	German Insurance	3.212.	Supervisory approval is only applicable to items not covered by the list of own funds according to Article 97. According the Level I text	Noted

	Association – Gesamtverband der D		the assessment has to be done by the company; only the classification is subject to approval by the supervisory authority. Delete: "~~assessment and~~" Replace: "requires ~~supervisory judgement~~" by "requires clear criteria"	
1,153.	Investment & Life Assurance Group (ILAG)	3.212.	One wonders whether the assessment is necessary for ordinary share capital and for the estate built up in the firm.	Noted
1,154.	Munich RE	3.212.	Supervisory approval is only applicable to items not covered by the list of own funds according to Article 97. delete "assessment and" -> according to the Level I text the assessment has to be performed by the company; only the classification is subject to approval by the supervisory authority replace "requires supervisory judgement" by "requires clear criteria"	Noted
1,155.	OAC Actuaries and Consultants	3.212.	One wonders whether the assessment is necessary for ordinary share capital and for the estate built up in the firm.	Noted
1,156.	Pearl Group Limited	3.212.	Supervisory approval is only applicable to items not covered by the list of own funds according to Article 97. Delete "assessment and": according the Level I text the assessment has to be done by the company; only the classification is subject to approval by the supervisory authority Replace "requires supervisory judgement" by "requires clear	Noted

			criteria"	
1,157.	CEA, ECO-SLV-09-441	3.213.	In case of non approval the supervisors should inform undertakings on the reasons. The assessment process should be flexible enough to allow the supervisory authority to consider market innovations. We believe the process for pre-approval should be clearly described and include a deadline for the supervisor's response to the request for approval.	Noted
1,158.	FFSA	3.213.	The assessment process should be flexible enough to allow the supervisory authority to consider market innovations We believe the process for pre-approval should be clearly described and include a deadline for the supervisor's response to the request for approval. In case of non-approval, the supervisor's response shall include the motives underlying the conclusions reached.	Noted
1,159.	German Insurance Association – Gesamtverb and der D	3.213.	In case of non approval the supervisors should inform undertakings on the reasons. The assessment process should be flexible enough to allow the supervisory authority to consider market innovations. We believe the process for pre-approval should be clearly described and include a deadline for the supervisor's response to the request for approval.	
1,160.	CRO Forum	3.214.	We are fully aligned with CEIOPS that the supervisory approval process should be principle based, based on clear and defined criteria.	Noted
1,161.	Lloyd's	3.214.	We fully support the approach to the approval of ancillary own funds being principle-based.	Noted

1,162.	CEA, ECO-SLV-09-441	3.216.	It should be the responsibility of the supervisor to demonstrate that compliance is not met.	Noted
1,163.	FFSA	3.216.	In This section CEIOPS deals with the responsibility of the undertaking in "checking whether its own fund items are compliant with the list and the required characteristics for classification in different tiers". FFSA recommends that it should be the responsibility of the supervisor to demonstrate that compliance is not met.	Noted
1,164.	German Insurance Association – Gesamtverband der D	3.216.	It should be the responsibility of the supervisor to demonstrate that compliance is not met.	Noted
1,165.	ROAM –	3.216.	In This section CEIOPS deals with the responsibility of the undertaking in "checking whether its own fund items are compliant with the list and the required characteristics for classification in different tiers". ROAM recommends that it should be the responsibility of the supervisor to demonstrate that compliance is not met.	Noted
1,166.	CEA, ECO-SLV-09-441	3.217.	First classification is approved and then the limits apply. Delete: "~~and whether the~~ …"	Noted
1,167.	CFO	3.217.	The own fund item classification is approved and then the limits apply. Therefore we suggest deleting the remainder of the sentence "and whether the…"	Noted

1,168.	German Insurance Association – Gesamtverband der D	3.217.	First classification is approved and then the limits apply. Delete: "~~and whether the~~ …"	Noted
1,169.	CEA, ECO-SLV-09-441	3.218.	Key terms and conditions of the instruments shall be included in the list.	Noted
1,170.	FFSA	3.218.	Key terms and conditions of the instruments shall be included	Noted
1,171.	German Insurance Association – Gesamtverband der D	3.218.	Key terms and conditions of the instruments shall be included in the list.	Noted
1,172.	CEA, ECO-SLV-09-441	3.219.	Supervisory reporting is defined in CP 58. Delete first sentence: "~~the supervisory …undertaking~~"	Noted
1,173.	CFO	3.219.	Supervisory reporting is defined in CP 58 and therefore we recommend that the first sentence be deleted.	Noted
1,174.	European Union member firms of Deloitte Touche To	3.219.	Supervisor approval of ancillary own funds We suggest that there should be a 3 month time limit from submission of all information required by the supervisor for the supervisor provide the supervisory decision on approval and classification of own funds.	Noted

1,175.	German Insurance Association – Gesamtverband der D	3.219.	Supervisory reporting is defined in CP 58. Delete first sentence: "~~the supervisory …undertaking~~"	Noted
1,176.	Munich RE	3.219.	delete "first sentence" – supervisory reporting is defined in CP 58	Noted
1,177.			Confidential comment deleted	
1,178.	AMICE	3.220.	In our opinion, transparency of supervisory actions should help ensuring harmonization across different Member States. We consider that the reasoning for accepting or rejecting the inclusion of the item into one category should be explicitly stated in the communication between the supervisor and the undertaking. Any other views expressed by other supervisors concerned, or by CEIOPS, within the consultation or mediation process, should also be included. A reasonable timeline should be set for the supervisor to decide whether capital instruments (or any other eligible items) are properly classified or not. Lastly, the undertaking should have the possibility to appeal for a delegation of tasks within the college of supervisors.	Noted
1,179.	Association of British Insurers	3.220.	A timeline should be included under level 2 for the approval process. We strongly recommend to build the following initial approval process : • based on draft prospectus, general guidelines, the undertaking sends an initial request to the supervisor, that	Noted

			has 15 days to provide with a provisional answer; • Then, the undertaking sends the final and formal documentation as requested in §3.218, and the explanations on any deviations compared to initial sending. • The supervisor has 15 days to validate the classification of the proposed instruments. In case of deviation compared to its initial provisional answer, or in case of no, the supervisor has to give a detailed and explicit rationale for it. • There must be an appeal process, the undertaking being able to respond to the argumentation of the supervisor (15 days). • The supervisor has an extra 15 days to give a 2nd answer. Once again, any no answer should be properly explained. We recommend adding a maximum time to reach supervisors answer on that process that could be no more than 1 month. The undertaking should have the possibility to escalate to a senior level, at the college of supervisor.	
1,180.			Confidential comment deleted	
1,181.	CEA, ECO-SLV-09-441	3.220.	A timeline should be included under level 2 for the approval process. CEA recommends that Transparency of supervisory actions should help and ensure harmonization across EU member states. We consider that reasons supporting the supervisory authority decision should be explicitly mentioned in its answer. Any other views expressed by other supervisors concerned or by Ceiops, if referred to a consultation or mediation process, should be included. The CP does not mention any deadline for the supervisor to provide	Noted

			its response on the appropriate classification of a capital instrument or other own funds. This may lead to undue delays in approving eligible elements of capital and may also result to inconsistent treatment of own funds across jurisdictions. We therefore strongly recommend building an initial approval process along the following lines: • Based on draft prospectus, general guidelines, the undertaking sends an initial request to the supervisor, that has 15 days to provide with a provisional answer. • Then, the undertaking sends the final and formal documentation as requested in §3.218, and the explanations on any deviations compared to initial sending. • The supervisor has 15 days to validate the classification of the proposed instruments. In case of deviation compared to its initial provisional answer, or in case of no, the supervisor has to give a detailed and explicit rationale for it. • There must be an appeal process, the undertaking being able to respond to the argumentation of the supervisor (15 days). • The supervisor has an extra 15 days to give a 2nd answer. Once again, any rejections should be properly explained. We also recommend implementing a pre-approval procedure with the supervisor that could be based, for example, on draft prospectus.	
1,182.	CFO	3.220.	The own fund item classification is approved and then the limits apply. Therefore we suggest deleting step 3. We recommend adding a maximum time for the supervisory approval process of no more than one month.	Noted

1,183.	CRO Forum	3.220.	On the 3 step process when granting supervisory approval of new own funds item not covered by the list, we recommend including a time frame. It is important that this is not too long as undertakings may need to decide swiftly. We believe 10 working days for each step is sufficient	Noted
1,184.	FFSA	3.220.	FFSA recommends that Transparency of supervisory actions should help and ensure harmonization across EU member states. We consider that reasons supporting the supervisory authority decision should be explicitly mentioned in its answer. Any other views expressed by other supervisors concerned or by CEIOPS, if referred to a consultation or mediation process, should be included. The supervisor motivates its non approval decision by benchmarking with other supervisors decisions. The CP does not mention any deadline for the supervisor to provide with its response on the appropriate classification of a capital instrument or other own funds. Also, the issuance of capital instrument is very expensive (legal, bank counsels, rating agencies…) and burdensome. As such, we strongly recommend to build the following initial approval process : - based on draft prospectus, general guidelines, the undertaking sends an initial request to the supervisor, that has 15 days to provide with a provisional answer; - Then, the undertaking sends the final and formal documentation as requested in §3.218, and the explanations on any deviations compared to initial sending. - The supervisor has 15 days to validate the classification of	Noted

			the proposed instruments. In case of deviation compared to its initial provisional answer, or in case of no, the supervisor has to give a detailed and explicit rationale for it. - There must be an appeal process, the undertaking being able to respond to the argumentation of the supervisor (15 days). - The supervisor has an extra 15 days to give a 2nd answer. Once again, any no answer should be properly explained. We recommend adding a maximum time to reach supervisors answer on that process that could be no more than 1 month. The undertaking should have the possibility to escalate to an upper level, at the college of supervisor.	
1,185.	German Insurance Association – Gesamtverband der D	3.220.	A timeline should be included under level 2 for the approval process. CEA recommends that Transparency of supervisory actions should help and ensure harmonization across EU member states. We consider that reasons supporting the supervisory authority decision should be explicitly mentioned in its answer. Any other views expressed by other supervisors concerned or by CEIOPS, if referred to a consultation or mediation process, should be included. The CP does not mention any deadline for the supervisor to provide its response on the appropriate classification of a capital instrument or other own funds. This may lead to undue delays in approving eligible elements of capital and may also result to inconsistent treatment of own funds across jurisdictions. We therefore strongly recommend building an initial approval process along the following lines: • based on draft prospectus, general guidelines, the	Noted

			undertaking sends an initial request to the supervisor, that has 15 days to provide with a provisional answer; • Then, the undertaking sends the final and formal documentation as requested in §3.218, and the explanations on any deviations compared to initial sending. • The supervisor has 15 days to validate the classification of the proposed instruments. In case of deviation compared to its initial provisional answer, or in case of no, the supervisor has to give a detailed and explicit rationale for it. • There must be an appeal process, the undertaking being able to respond to the argumentation of the supervisor (15 days). • The supervisor has an extra 15 days to give a 2nd answer. Once again, any rejections should be properly explained. We also recommend implementing a pre-approval procedure with the supervisor that could be based, for example, on draft prospectus.	
1,186.	Pearl Group Limited	3.220.	A timeline should be included under level 2 for the approval process. We strongly recommend to build the following initial approval process (as suggested by ABI): • based on draft prospectus, general guidelines, the undertaking sends an initial request to the supervisor, that has 15 days to provide with a provisional answer; • Then, the undertaking sends the final and formal documentation as requested in §3.218, and the explanations on any deviations compared to initial sending.	Noted

			• The supervisor has 15 days to validate the classification of the proposed instruments. In case of deviation compared to its initial provisional answer, or in case of no, the supervisor has to give a detailed and explicit rationale for it. • There must be an appeal process, the undertaking being able to respond to the argumentation of the supervisor (15 days). • The supervisor has an extra 15 days to give a 2nd answer. Once again, any no answer should be properly explained. We recommend adding a maximum time to reach supervisors answer on that process that could be no more than 1 month.	
1,187.	RBSI	3.220.	The supervisory approval process for capital envisages that the supervisory authority will determine which instruments will be loss absorbing and to what degree. This should be left to the firm to analyse and determine backed up if necessary by an appropriate legal opinion, with the supervisor having the final approval.	Noted
1,188.	ROAM –	3.220.	ROAM recommends that transparency of supervisory actions should help and ensure harmonization across EU member states. We consider that reasons supporting the supervisory authority decision should be explicitly mentioned in its answer. Any other views expressed by other supervisors concerned or by CEIOPS, when referred to a consultation or mediation process, should be included. The supervisor motivates its non approval decision by benchmarking with other supervisors decisions. The CP does not mention any deadline for the supervisor to provide with its response on the appropriate classification of a capital instrument or other own funds.	Noted

			Also, the issuance of capital instrument is very expensive (legal, bank counsels, rating agencies…) and burdensome. As such, we strongly recommend to build the following initial approval process : - based on draft prospectus, general guidelines, the undertaking sends an initial request to the supervisor, which has 15 days to provide with a provisional answer; - Then, the undertaking sends the final and formal documentation as requested in §3.218, and the explanations on any deviations compared to initial sending. - The supervisor has 15 days to validate the classification of the proposed instruments. In case of deviation compared to its initial provisional answer, or in case of no, the supervisor has to give a detailed and explicit rationale for it. In case the supervisor does not reply, the response is deemed to be positive. - There must be an appeal process, the undertaking being able to respond to the argumentation of the supervisor (15 days). - The supervisor has an extra 15 days to give a 2nd answer. Once again, any negative answer should be properly explained. In case the supervisor does not reply, the response is deemed to be positive. We recommend adding a maximum time to obtain supervisory approval which should be no more than 1 month. The undertaking should have the possibility to appeal to an upper level, at the college of supervisor or CEIOPS (also in case of a solo undertaking) after a second negative answer.	
1,189.	Lloyd's	3.223.	We agree that approval should be a one-off process with approval	Noted

			given until legal maturity, and regard this as a step forward from the annual approval requirement set out in CP29.	
1,190.	XL Capital Ltd	3.223.	There appears to be an inconsistency between this paragraph and CP 29 "Supervisory approval of ancillary own funds". According to CP 46 certain Ancillary own funds could be eligible as Tier 2 or Tier 3 instruments for which the minimum maturity at issue date are 5 and 3 years respectively (§ 3.186) and according to §3.223 the supervisory approval is given for the item until its legal maturity. However, in CP 29 (§3.39) the supervisory approval of the amount of an Ancillary own fund item for inclusion in own funds, or for the method to determine that amount, should not exceed a period of 12 months.	Noted
1,191.	Association of British Insurers	3.224.	Where changes have been contractually foreseen and pre-approved by supervisors there should not be a re-approval required.	Noted
1,192.			Confidential comment deleted	
1,193.	CEA, ECO-SLV-09-441	3.224.	Where changes have been contractually foreseen and pre-approved by supervisors there should not be a re-approval required. We would add "materially" before "alter" and would welcome a clearer definition of the term restructuring.	Noted
1,194.	CRO Forum	3.224.	Whilst we agree that new approval should be sought in the case of a material restructuring, we disagree with the proposal that a new approval should be necessary after contractual trigger events. We propose that the consequences of contractual triggers should be covered in the original approval.	Noted
1,195.	FFSA	3.224.	We would add "materially" before "alter" and would welcome a	Noted

			clearer definition of the term restructuring. We would suggest that the request should differ from an initial request, in so far as the regulator would only need to provide an approval based solely on the consequences of the proposed changes in wording.	
1,196.	German Insurance Association – Gesamtverband der D	3.224.	Where changes have been contractually foreseen and pre-approved by supervisors there should not be a re-approval required We would add "materially" before "alter" and would welcome a clearer definition of the term restructuring.	Noted
1,197.	KPMG ELLP	3.224.	See 3.156	Noted
1,198.	Munich RE	3.224.	If changes have been contractually foreseen and pre-approved by the supervisor, no re-approval should be required.	Noted
1,199.	Pearl Group Limited	3.224.	Where changes have been contractually foreseen and pre-approved by supervisors there should not be a re-approval required.	Noted
1,200.	AMICE	3.226.	AMICE members welcome the introduction of this paragraph in CEIOPS paper.	Noted
1,201.	Association of British Insurers	3.226.	There is a wider range of instruments in insurance than in baking. There should be an appropriate degree of consistency but the different nature of business in insurance and in banking should be taken into account. So a wider range of instruments could be appropriate for the insurance sector. However, the requirements proposed in CP 46 would are more onerous than in the draft Capital Requirements Directive for banks and would therefore put insurers in a detrimental position. We would therefore urge CEIOPS to avoid creating an unlevel playing field between the two sectors.	Noted
1,202.			Confidential comment deleted	

1,203.	BNP PARIBAS	3.226.	One overarching objective of many European financial sector regulators and companies is convergence between forms of hybrid capital in the bank and insurance sectors. In most European jurisdictions, rules for insurance Tier 1 hybrids have not yet been promulgated, although a number of insurance issuers have taken a "best practice" approach to structuring securities with a view to potentially receiving Tier 1 credit in the future under Solvency II. In other jurisdictions, convergence has already been achieved and insurers have taken advantage of these frameworks to raise significant amounts of hybrid Tier 1 capital. We think that it is important for insurance companies and their regulators to have the opportunity to participate in the finalisation of any proposals and to ensure that: • there is a level playing field between banks and insurers in terms of the forms of capital available to them; and • the relative timing of these proposals and Solvency II does not unfairly leave insurers in a position of uncertainty with regard to their ability to issue hybrid capital. We believe that the requirements set by the CEIOPS in this CP, in particular in respect of Tier 1 hybrids, are not met by any existing instruments. Furthermore, we doubt that there would any investor appetite for Tier 1 as envisaged in the CP. There is a strong risk that insurance companies will need to rely only on common equity for Tier 1 purposes which will create a very significant distortion between EU and non-EU insurance companies	Noted
1,204.	CEA, ECO-SLV-09-441	3.226.	There is a wider range of instruments in insurance than in baking. There should be an appropriate degree of consistency but the different nature of business in insurance and in banking should be taken into account. So a wider range of instruments could be appropriate for the insurance sector.	Noted

			Ceiops should consider banking developments as regard the definition and criteria for own funds. This is to ensure a level playing field between sectors. At this stage divergences with the banking sector on Tier 1 capital are numerous: • Ability to have call dates followed by step-up. • Sub-tiering exists in particular for Tier. • No necessity to have more than junior subordination to qualify as T1. • Mandatory fixed charges avoided though reduction of notional in defined circumstances. It is clear that banks and insurers are competitors in capital markets. We are aware that CEBS published a Consultation Paper (CP 27) on “Implementation Guidelines regarding Hybrid Capital Instruments” and the final Level III guidance is still pending. But future developments have to be anticipated to ensure that the directions of Ceiops and CEBS are consistent. Banking rules should be reviewed in the light of Solvency II Level II implementing measures. This does not mean that rules need to be the same and any comparison should not be at the cost of inappropriate rules under Solvency II. Instead, the different nature of business in the insurance sector and in the banking sector and between Basel II and Solvency II should be considered.	
1,205.	CFO	3.226.	Banking rules should be examined in the light of Solvency II implementing measures. Therefore add the words “and vice versa” to the last sentence.	Noted
1,206.	CRO Forum	3.226.	We agree with the observations of CEIOPS regarding cross-sector consistency, and we believe that is it is important to achieve as much as possible a level playing field between financial institutions.	Noted

			First we note the important differences between the regulatory regimes for insurance business and pension fund business. We urge CEIOPS to address this as a matter of urgency. Second with bank, we recommend aligning the 2 sectors as much as possible (given the specificities of the insurers) for 3 reasons: a. not to create confusion for analysts and investors that may lead to reduce the financial flexibility of insurers and the confidence in the financial strength of European insurers, b. avoid distortions with bancassurers that may arise from wider T1 qualification criteria of the banking sector, especially for hybrid capital c. be aligned with the practices of rating agencies (deriving Basel rules for insurers in terms of criteria of admissibility) and be prepared as soon as possible for the regulatory convergence between the 2 sectors (e.g. France, UK), knowing that bank sector is in advance on this topic (CEBS proposal in June 2009).	
1,207.	FFSA	3.226.	Divergence with the banking sector are numerous - ability to have call dates followed by step-up - sub-tiering exists in particular for Tier - no necessity to have more than junior subordination to qualify as T1 - mandatory fixed charges avoided though reduction of notional in defined circumstances We would recommend aligning as much as possible the two sectors to avoid putting insurers at a disadvantage.	Noted
1,208.	German	3.226.	There is a wider range of instruments in insurance than in baking.	Noted

	Insurance Association – Gesamtverband der D		There should be an appropriate degree of consistency but the different nature of business in insurance and in banking should be taken into account. So a wider range of instruments could be appropriate for the insurance sector. CEIOPS should consider banking developments as regard the definition and criteria for own funds. This is to ensure a level playing field between sectors. At this stage divergences with the banking sector on Tier 1 capital are numerous: • ability to have call dates followed by step-up • sub-tiering exists in particular for Tier • no necessity to have more than junior subordination to qualify as T1 • mandatory fixed charges avoided though reduction of notional in defined circumstances It is clear that banks and insurers are competitors in capital markets. We are aware that CEBS published a Consultation Paper (CP 27) on “Implementation Guidelines regarding Hybrid Capital Instruments” and the final Level III guidance is still pending. But future developments have to be anticipated to ensure that the directions of CEIOPS and CEBS are consistent. Banking rules should be reviewed in the light of Solvency II Level II implementing measures. This does not mean that rules need to be the same and any comparison should not be at the cost of inappropriate rules under Solvency II. Instead, the different nature of business in the insurance sector and in the banking sector and between Basel II and Solvency II should be considered.	
1,209.	KPMG ELLP	3.226.	See 3.158	Noted
1,210.	Munich RE	3.226.	We believe that the requirements set by CEIOPS in the CP, in	Noted

			particular in respect of Tier 1 hybrids, are not met by any existing instrument. Furthermore we doubt that there would be any investor appetite for Tier 1 as envisaged in the CP. There is therefore a strong risk that insurance companies will rely only on common equity for Tier 1 purposes which will create a very significant distortion between EU and non-EU insurance companies. In our view it is also very important to get as close as possible to a level playing field for financial institutions. The implementation of CP 46 would not achieve this goal, as the criteria for hybrid capital are much more restrictive than for the banking industry. Own funds would be much more expensive for insurers than for banks. Banks would have better access to the capital market. This is particularly unacceptable, as insurers have not been the originators of the financial crisis and have shown strong resistance to it so far.	
1,211.	Pearl Group Limited	3.226.	There is a wider range of instruments in insurance than in banking. There should be an appropriate degree of consistency but the different nature of business in insurance and in banking should be taken into account. So a wider range of instruments could be appropriate for the insurance sector. However, the requirements proposed in CP 46 would are more onerous than in the draft Capital Requirements Directive for banks and would therefore put insurers in a detrimental position. We would therefore urge CEIOPS to avoid creating an unlevel playing field between the two sectors.	Noted
1,212.	ROAM –	3.226.	Divergence with the banking sector are numerous - ability to have call dates followed by step-up - sub-tiering exists in particular for Tier - no necessity to have more than junior subordination to qualify as T1 - mandatory fixed charges avoided though reduction of	Noted

			notional in defined circumstances We would recommend aligning as much as possible the two sectors to avoid putting insurers at a disadvantage.	
1,213.	CEA, ECO-SLV-09-441	3.227.	It should also be noted that the latest T1 debt are currently accounted for as equity under IAIS guidelines while it would not qualify as Tier 1 under the current guidelines of the CP. We would have expected the consistency check with IAIS to be part of the impact assessment done by Ceiops when developing its advice.	Noted
1,214.	CFO	3.227.	We would expect the consistency check with IAIS to be part of the impact assessment performed by CEIOPS when developing its advice.	Noted
1,215.	FFSA	3.227.	The latest T1 debt are currently accounted for as equity under IAIS guidelines while it would not quality as Tier 1 under the current guidelines of the CP. Allowing Tier 1 instrument in the tier 1 bucket for solvency II would align the regulatory and accounting treatment of the instruments.	Noted
1,216.	German Insurance Association – Gesamtverband der D	3.227.	It should also be noted that the latest T1 debt are currently accounted for as equity under IAIS guidelines while it would not qualify as Tier 1 under the current guidelines of the CP. We would have expected the consistency check with IAIS to be part of the impact assessment done by CEIOPS when developing its advice.	Noted
1,217.	Munich RE	3.227.	It is necessary to get as close as possible to a level playing field between the banking and insurance industries. Currently the CEIOPS CP is much more conservative and restrictive than the CEBS-approach, i.e. no level playing field. Also investors have become aware of the difference: according to feedback from them, they are wondering why the CEIOPS-proposal deviates so much from the CEBS-proposal.	Noted

1,218.	UNESPA (Association of Spanish Insurers)	3.227.	See 3.199	See comment 1073
1,219.	Munich RE	3.228.	Grandfathering is not addressed in CP 46, but should be appropriately reflected in the Implementing Measures. Grandfathering will be crucial once the new solvency regime is in place, as many outstanding instruments will not fulfil the new criteria. If grandfathering arrangements were not available under level 2, we would expect that some insurers, depending on the detail of the implementing measures, may need to raise new capital. Consequently grandfathering is needed to avoid significant market cost and disruption. For these reasons, it is crucial that all instruments issued before the date the Solvency II regime enters into force, be covered by appropriate grandfathering. A portion of insurance hybrid capital instruments have been issued as "Tier 1 style" instruments despite no formal concept of hybrid Tier 1 being applicable under Solvency I in most countries. These instruments [i.e. undated instruments with mandatory and optional interest deferral, ACSM and Call with step-up (included in the 50% bucket under Solvency I)] should be grandfathered as Tier 1 capital.	Noted
1,220.	German Insurance Association – Gesamtverband der D	3.228. (new	Although grandfathering was expected under Level 2 and is available for capital instruments issued by the banking industry, there is no mentioning of grandfathering. Grandfathering will be crucial once the new solvency regime is in place, as this will ensure stability in the capital market. If grandfathering arrangements were not available under level 2, we would expect that some insurers, depending on the detail of the implementing measures, may need to raise new capital. This could cause turbulence in the financial markets and would increase costs of capital significantly, especially in current conditions. For these reasons, it is crucial that all	Noted

			instruments issued before the date when the Solvency II regime is in force, are covered by appropriate grandfathering. Grandfathering should be granted to all instruments issued under the current insurance legislation and jurisdiction and before the date Solvency II comes in force in such a way that undated instruments will be treated as Tier 1 and dated instruments will be treated as Tier 2, either until an option to call is exercised or final maturity in the case of dated instruments with bullet maturity."	
1,221.	CEA, ECO-SLV-09-441	3.228.	Although grandfathering was expected under Level 2 and is available for capital instruments issued by the banking industry, there is no mentioning of grandfathering. Grandfathering will be crucial once the new solvency regime is in place, as this will ensure stability in the capital market. If grandfathering arrangements were not available under level 2, we would expect that some insurers, depending on the detail of the implementing measures, may need to raise new capital. This could cause turbulence in the financial markets and would increase costs of capital significantly, especially in current conditions. For these reasons, it is crucial that all instruments issued before the date when the Solvency II regime is in force, are covered by appropriate grandfathering. Grandfathering should be granted to all instruments issued under the current insurance legislation and jurisdiction and before the date Solvency II comes in force in such a way that undated instruments will be treated as Tier 1 and dated instruments will be treated as Tier 2, either until an option to call is exercised or final maturity in the case of dated instruments with bullet maturity."	Noted