Summary of Comments on CEIOPS-CP-52/09 CEIOPS-SEC-115/09

Consultation Paper on the Draft L2 Advice on SCR Standard Formula - Reinsurance mitigation

CEIOPS would like to thank Association of British Insurers, Belgian Coordination Group Solvency II (Assuralia/, CEA, CRO Forum, DIMA (Dublin International Insurance & Management , ECIROA, European Union member firms of Deloitte Touche To, FFSA, German Insurance Association – Gesamtverband der D, GROUPAMA, Groupe Consultatif, Institut des Actuaires (France), International Underwriting Association of London, Just Retirement Limited, Legal & General Group, Lloyd's, Lucida plc, Munich RE, Pacific Life Re, Pearl Group Limited, PricewaterhouseCoopers LLP, RBSI, ROAM , Solvency II Legal Group and XL Capital Ltd

The numbering of the paragraphs refers to Consultation Paper No. 52 (CEIOPS-CP-52/09)

No.	Name	Reference	Comment	Resolution
1.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURANCES DU	General Comment	: We see the implementing measures as sensible. However some additional quantitative guidance would be welcome in the following areas. : Unless CEIOPS is treating with qualitative aspects of reinsurance risk mitigation techniques, more objective and measurable guidelines are welcome. : Some precisions are need to made more clear the materiality of a risk : Only Securitisation is accepted in this CP as an Alternative Risk Transfer instrument other than reinsurance. Finite and SPV are not accepted, what about the other instruments?	Noted Noted. See 1.2. We are covering the qualitative criteria. Not agreed. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms Do not agree. Our intention is to capture all arrangements that have the economic effects of reinsurance, in line with principle

			: More details on the securitisation have to be provided. : Description of the quality of credit is not very precise.	2. If not covered under this advice they would fall under the advice of CP31 Financial risk mitigation techniques. Noted. See also CP 36 Noted. CEIOPS would like to keep the advice as high level principles. See also revised text.
2.	Association of British Insurers	General Comment	We welcome in general the principle-based approach in CP 52. We believe the mere existence of some basis risk should not automatically result in 100% disregard of risk mitigation. An appropriate recognition of reinsurance techniques containing basis risk, with the basis risk measured in line with the 99.5% confidence interval, stipulated by the Directive.	Noted Disagree. There may be a few contracts where we might safely ignore basis risk. However for some instruments where the trigger for recovery is different from the size of the reinsured's loss, then there is the possibility that the instrument will not respond (sufficiently), despite a significant loss for the reinsured from the event. It is also possible that the recovery is greater than expected. For such a contract there is no obvious way to deal with it in the standard SCR. Therefore it is necessary under the standard formula to restrict

				the level of basis risk allowed. Firms with material basis risk can seek (partial)IM approval.
			In our opinion all risk mitigation techniques should be allowed on an economic basis.	Partially agree. Unfortunately due to the limitation of the standard formula design in some modules, full allowance to all techniques cannot be given.
			We agree with the simplifications, but there is a need for some recognition of non-proportional reinsurance in the standard formula, which may not cover all types.	Noted. CEIOPS has not been able to address this issue in the context of the non life standard formula. We have considered some ideas for dealing with this, though in our opinion it is not so straightforward. The non-life calibration assumes an average level of non-proportional reinsurance has been purchased. CEIOPS is open to detailed specific proposals to include this issue.
			We note that recognition of risk mitigation is covered by CP 56 (5.257-5.265) and so we understand that CP 52 only applies to the case of the standard formula.	CP 52 covers reinsurance risk mitigation in the context of the standard formula whilst CP 56

				covers advice in respect of Internal Models.
3.			Confidential comment deleted	Noted
4.	CEA, ECO-SLV-09-447	General Comment	Introductory remarks: The CEA welcomes the opportunity to comment on the Consultation Paper (CP) No. 52 on SCR allowance for reinsurance techniques. 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. The CEA agrees with the use of high level principles to recognise the fact that there will be innovation in the reinsurance market.	Noted
			The CEA believes that all risk mitigation techniques should be allowed for according to their genuine risk transfer capacity.	Partially agree. Unfortunately due to the limitation of the standard formula design in some modules, full allowance to all techniques cannot be given.
			The CEA asks Ceiops not to introduce clauses that could discourage the use of effective risk mitigation techniques, as the restriction to	Disagree. CEIOPS considers necessary such requirements for

			minimum BBB rating, as it is opposite to the spirit of the Directive.	ensuring the quality of the risk transfer. Also see revised text.
			The CEA disagrees with Ceiops statement which excludes finite reinsurance or comparable SPV in the standard formula. We believe that effective risk transfer may exist in finite reinsurance. Therefore it should not be excluded without assessment of risk transfer.	Partially agree. See revised text. According to CEIOPS there are a wide variety of contracts and unfortunately in the non life context, it is not possible to capture them all under the standard formula SCR. As stated in par 3.19 and 3.45 we should not expect the standard formula to capture tailor-made instruments. Firms would need considerably greater understanding of its business to be able to make an intelligent purchase and in such cases it would be reasonable to expect IM treatment.

			The CEA does not agree that reinsurance mitigation techniques should be fully ruled out of the SCR calculation if basis risk is material. The CEA asks for appropriate recognition of reinsurance techniques containing basis risk, with the basis risk measured in line with the 99.5% confidence interval, stipulated by the Directive. CEIOPS approach runs counter to a number of principles under	Disagree. There may be a few contracts where we might safely ignore basis risk. However for some instruments where the trigger for recovery is different from the size of the reinsured's loss, then there is the possibility that the instrument will not respond (sufficiently), despite a significant loss for the reinsured from the event. It is also possible that the recovery is greater than expected. For such a contract there is no obvious way to deal with it in the standard SCR. Therefore it is necessary under the standard formula to restrict the level of basis risk allowed. Firms with material basis risk can seek (partial)IM approval.

			Solvency II as follows: : Solvency II is designed to encourage and reflect good risk management practices. Even where partial mitigation is achieved it should be allowed for within the standard model SCR. : In the equity stress tests, there is no allowance for basis risk compared to the indices used. We note that the recognition of risk mitigation in internal models is covered by CP56 (5.257-5.265) and so we understand that this paper applies only to the case of the standard formula.	Noted Agree
5.	CRO Forum	General Comment	**52.A Further detail on Non-proportional reinsurance required (priority: high)** The CRO Forum appreciate the important points raised in this CP with respect to reinsurance mitigation which mainly covers the qualitative criteria that reinsurance and securitisation arrangements must meet in order to ensure that there has been effective underwriting risk transfer to a third party. But we also feel that it is important to address the issue of the risk mitigating effects of non-proportional reinsurance which still are not adequately covered in the standard formula. It is important to test available approaches and methods for the standard formula in QIS5 even if the standard formula will not be able to reflect the impact of non-proportional reinsurance like an internal model. **52.B Recognition of risk mitigations according to principles and economic effects (priority: high)** CEIOPS should clarify that EU and non-EU mitigations are treated according to substance not location (see comments to 3.35 and	Noted. CEIOPS has not been able to address this issue in the context of the non life standard formula. We have considered some ideas for dealing with this, though in our opinion it is not so straightforward. The non-life calibration assumes an average level of non-proportional reinsurance has been purchased. CEIOPS is open to detailed specific proposals to include this issue. Noted, see revised text for clarification.

			3.56 re non EU/EEA providers). We disagree with the 2 requirements expressed here: "Allowance is given to reinsurance risk mitigation provided by entities which are subject to the Level 1 text and are not in breach of the SCR", as it seems to ignore the equivalence principle, and that there are no arguments not to recognize risk mitigation in case of breach of SCR.	
6.	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. The proposal for the guidance to be high level with no detailed rules is welcome. However, the paper goes on to outline quite detailed criteria which may result in a lack of credit in the SCR for some forms of reinsurance. A high level principle should be set so that if it can be clearly demonstrated that reinsurance reduces the risk to the ceding undertaking, credit should be given for this fact in the calculation of the SCR. The paper uses a "form" of risk mitigation and then proceeds to outline the effective "risk mitigation" regardless of form. In particular "principle 1" is only required to support definitions of risk transfer and the variants thereto. Altering the title to "underwriting" risk mitigation will achieve the purpose and allow us avoid risk transfer definitions. In this regard a reinsurance transaction which contains both financial risk mitigation and (financial) market risk mitigation would be a valid contact for risk mitigation. There may be a consequent amendment required to CP31 to allow for this.	Noted. Noted Noted. Due to some limitations within the standard formula SCR it is CEIOPS view that such criteria are necessary.
7.	ECIROA	General Comment	A large proportion of reinsurance captive insurance companies are reinsuring risks underwritten by large commercial insurers. Most captives do not have their own security rating. This business will be severely impacted if reinsurance to a non-rated captive is not recognised as effective transfer of risk. As a minimum the costs of	Noted.

			conducting this business will be increased and it may become not economically viable. The worst case scenario is that commercial insurers are no longer willing to reinsure to unrated captives as they are unable receive credit for this in their SCR calculation. The result is that the Captives Parent Companies will not be able to purchase the equivalent covers from the commercial market and will have an uninsured exposure. Commercial Insurers are now conducting their own due diligence before reinsuring to captives, which must meet their security criteria. Insurers should be allowed to make their own judgement in dealing with captives, having the comfort of the financial rating of the Parent company and the Captives ability to meet the SCR. Please note that where a comment has not been made on a particular paragraph, this does not indicate that we agree with the paragraph.	
8.	FFSA	General Comment	FFSA notes that this is a very generic paper on the recognition of reinsurance techniques without any reference to internal reinsurance. FFSA is expecting to receive some clarification on internal reinsurance as well. FFSA would like CEIOPS to define in detail what kind of basis risk they intend to cover in clauses 3.19 and 3.44.	Noted. Intragroup reinsurance arrangements are covered by CP 61 Noted. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms

			FFSA would also like to kindly urge CEIOPS not to introduce clauses that could discourage the use of effective risk mitigation techniques as it seems to be opposite to the spirit of the Directive. Consequently, FFSA would like this section to be reworded to make it clear that the basic rule is that reinsurance mitigation techniques including basis risks should be recognized as fully effective mitigation techniques, except if the basis risk is material. In such case, the undertaking shall allow for the reinsurance mitigation technique but shall also allow for the basis risk in line with the 99.5% confidence level of the SCR.(3.44) FFSA disagrees with CEIOPS statement which excludes so-called finite reinsurance or comparable SPV of the non life premium and reserve sub-module in the standard formula without checking whether such structure has true risk transfer features. FFSA believes that effective risk transfer should be examined and that in some cases, it would be found in finite reinsurance. Therefore it should not be excluded without assessing such risk transfer.(3.45)	Partially agree. See response to comment 4. Partially agree. See response to comment 4.
9.			Confidential comment deleted	
10.	German Insurance Association – Gesamtverb and der D	General Comment	GDV appreciates CEIOPS' 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 our comments might change as our work develops. Our views may evolve depending in particular, on other elements of the framework which are not yet fixed – e.g. specific issues that will be discussed not until the third wave is disclosed. The GDV agrees with the use of high level principles to recognise	Noted Noted

			the fact that there will be innovation in the reinsurance market.	
			The GDV believes that all risk mitigation techniques should be allowed for according to their genuine risk transfer capacity. The GDV asks CEIOPS not to introduce clauses that could discourage the use of effective risk mitigation techniques, as the restriction to minimum BBB rating, as it is opposite to the spirit of the Directive.	Disagree. See responses to comment 4.
			The GDV disagrees with CEIOPS statement which excludes finite reinsurance or comparable SPV in the standard formula. We believe that effective risk transfer may exist in finite reinsurance. Therefore it should not be excluded without assessment of risk transfer.	Partially agree. See responses to comment 4
			The GDV does not agree that reinsurance mitigation techniques should be fully ruled out of the SCR calculation if basis risk is material. The GDV asks for appropriate recognition of reinsurance techniques containing basis risk, with the basis risk measured in line with the 99.5% confidence interval, stipulated by the Directive.	Disagree. See responses to comment 4
			CEIOPS approach runs counter to a number of principles under Solvency II as follows:	Noted
			: Solvency II is designed to encourage and reflect good risk management practices. Even where partial mitigation is achieved it should be allowed for within the standard model SCR.	
			: In the equity stress tests, there is no allowance for basis risk compared to the indices used.	
			We note that the recognition of risk mitigation in internal models is covered by CP56 (5.257-5.265) and so we understand that this paper applies only to the case of the standard formula.	Agree.
11.	GROUPAMA	General Comment	CEIOPS advice and principles defined are “high level”: we are given a guide of best practices and CEIOPS does not wish to detail (and	Noted

			validate) all existing (or future) reinsurance techniques. Few remarks on 5 principles: They actually seem important in an economic relationship between the insurer and reinsurer: effective risk transfer, economic effect over legal form, legal certainty, effectiveness, enforceability, liquidity and valuation, rating of reinsurers. Nevertheless, on the last general principle, we do not understand why CEIOPS takes a position on the ratings, which is the responsibility of agencies. The failure to consider certain types of reinsurance techniques in the standard formula should be challenged. Any reinsurance technique should be allowed and considered in calculating the SCR standard formula, at least for its economic value or the mitigation effect provided.	Partially agree. See response to comment 4.
12.	Groupe Consultatif	General Comment	It is important that the focus is on principles and not rules. This CP seems to follow that line of thought	Noted
13.	Institut des Actuaires (France)	General Comment	The Institut des Actuaires strongly invites CEIOPS to continue to work with the industry and actuarial associations in order to define precise criteria for the recognition of reinsurance in the standard formula.	Noted
14.	Just Retirement Limited	General Comment	Subject to the specific comments below, we support the proposals in the consultation paper.	Noted
15.	Legal & General Group	General Comment	We support the CP in general but believe that where there is a transfer of risk credit should be given. In particular there are common/normal market practices where we would expect credit to be given but where it is possible to read the CP as being overly restrictive. i.e. the existence of some basis risk should not automatically lead to 100% loss of credit.	Noted

			All risk mitigation techniques should be allowed on an economic basis and indeed as part of sensible risk management a firm would expect to use such techniques.	Noted. See response to comment 4.
16.	Lloyd's	General Comment	We support the qualitative criteria required to allow reinsurance arrangements to be used to reduce the capital requirements in the standard SCR. There are areas in the document that require further consideration. Most of these surround proposed tests/requirements/measures that would be impossible to meet in reality. Whilst proportionality overlays Solvency II (meaning they could be overcome in practice) there still remains a goal to make the implementation measures realistic in design and so a number of changes would be required. Our concerns are: 1. Para 3.14 includes the phrase "Beyond dispute". Reinsurance disputes do occur (but would not be seen at the outset of the policy) which means this measure would be impossible to meet as a test as no reinsurance policy is beyond dispute. The words "and beyond dispute" should be removed or amended to "and expected to be beyond dispute". 2. Para 3.14 final bullet point. It is clearly out of the control of the undertaking for a contract to be enforceable in all jurisdictions. This is an unrealistic expectation. Most reinsurance contracts will	Noted Noted We do not agree. CEIOPS emphasises that the words "shall take into account" mean just that and that the examples provided in the responses indicate that the way the tests are met or not met can be as relevant as the fact that they are or are not met. We do not agree. Please note that where applicable and relevant proportionality may be taken into

			cover many jurisdictions and it would be disproportionate to investigate enforceability in all of them. This bullet point should be amended to "determine under which law, court and jurisdiction any disputes are to be resolved".	account.
			3. Para 3.19 The basis risk of certain reinsurance, be it based on indices or as a CAT bond, should not preclude those potential assets from being included in the SCR The current wording suggests that contracts with immaterial basis should be included. We disagree and suggest that such contracts are allowable but only if the basis risk has been adequately allowed for. (i.e. at a 99.5% confidence level)	We do not agree. See response to comment 4.
			4. Paras 3.29 and 3.30. It is unclear how the SCR formula will allow for (except those covering the CAT events) the non renewal or renewal at increased terms for reinsurance. The standard formula uses expected premiums (net of reinsurance spend) as a base measure. Purchasing reinsurance on adverse terms (for example higher premium rates) would reduce net premiums and hence reduce the standard formula premium risk. We do not believe this is the intention and so more clarity is needed on this topic.	We agree. See revised text 3.28 and 3.51
			5. Para 3.35. This statement is inconsistent with other elements of the implementing measure, especially CP51, where lower rated reinsurers are included and adequately treated. It is also very important to allow for collateral of any reinsurer, regardless of their rating. Collateral is also adequately included and allowed for in CP51. This paragraph should be removed, as it is unnecessarily prescriptive given the risk associated with default are adequately covered elsewhere in the implementing measures.	We do not agree. See response to comment 4. Agree. Collateral is allowed for in line with the advice provided in CP31.

17.	Lucida plc	General Comment	Lucida is a specialist UK insurance company focused on annuity and longevity risk business. We currently insure annuitants in the UK and the Republic of Ireland (the latter through reinsurance).	Noted
18.	Munich RE	General Comment	We fully support all of the GDV statements and would like to add the following points: We appreciate the important points raised in this CP with respect to reinsurance mitigation which mainly covers the qualitative criteria that reinsurance and securitisation arrangements must meet in order to ensure that there has been effective underwriting risk transfer to a third party. But we also feel that it is important to address the issue of the risk mitigating effects of non-proportional reinsurance which still is not adequately covered in the standard formula. It is important to test available approaches and methods for the standard formula in QIS5 even if the standard formula will not be able to reflect the impact of non-proportional like an internal model. In CP 50 the approaches advised to model Catastrophe risk in the standard formula do not adequately take non-proportional reinsurance into account.	Noted. See responses to GDV comment 10. Noted. See response to comment 5.
19.	Pearl Group Limited	General Comment	We welcome in general the principle-based approach in CP52. We have a concern that this CP like all the other CPs takes a prudent view. While this might feel appropriate in each CP we are worried that this will mean that the overall Solvency II legislation will be overly prudent when summed over all the CPs. We believe the mere existence of some basis risk should not automatically result in 100% disregard of risk mitigation. In our opinion all risk mitigation techniques should be allowed on an economic basis.	Noted. We disagree. The approach taken is this CP is appropriate in the context of the standard formula. We partially agree. See response to comment 4.

			We agree with the simplifications, but there is a need for some recognition of non-proportional reinsurance in the standard formula, which may not cover all types. The fact that reinsurers have to be of a BBB standard seems unnecessarily prudent. Also, this creates a prescipise risk in that when BBB or above 100% is allowed and then as soon as the reinsurer goes below BBB then 0% is allowed. We suggest that this methodology is reviewed.	Noted. See response to comment 5. We do not agree. See response to comment 4
20.	PricewaterhouseCoopers LLP	General Comment	We welcome the general “high level guidance” approach which recognises that risk transfer techniques evolve as well as the focus on the economic substance of risk transfer arrangement as opposed to the legal form.	Noted
21.	PricewaterhouseCoopers LLP	General Comment	We welcome the general “high level guidance” approach which recognises that risk transfer techniques evolve as well as the focus on the economic substance of risk transfer arrangement as opposed to the legal form.	Noted
22.	ROAM	General Comment	ROAM notes that this is a very generic paper on the recognition of reinsurance techniques without any reference to internal reinsurance. ROAM is expecting to receive some clarification on internal reinsurance as well. ROAM would like CEIOPS to define in detail what kind of basis risk they intend to cover in this clause.	Noted. For further details on internal reinsurance please refer to paper on intragroup reinsurance Cp61 We do not agree. Noted. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms

			ROAM would also like to kindly urge CEIOPS not to introduce clauses that could discourage the use of effective risk mitigation techniques as it seems to be opposite to the spirit of the Directive. Consequently, ROAM would like this section to be reworded to make it clear that the basic rule is that reinsurance mitigation techniques including basis risks should be recognized as fully effective mitigation techniques, except if the basis risk is material. In such case, the undertaking shall allow for the reinsurance mitigation technique but shall also allow for the basis risk in line with the 99.5% confidence level of the SCR.(3.44) ROAM disagrees with CEIOPS statement which excludes so-called finite reinsurance or comparable SPV of the non life premium and reserve sub-module in the standard formula without checking whether such structure has true risk transfer features. ROAM believes that effective risk transfer should be examined and that in some cases, it would be found in finite reinsurance. Therefore it should not be excluded without assessing such risk transfer.(3.45)	Noted. See responses to comment 4. Noted. See responses to comment 4.
23.			Confidential comment deleted	
24.	Solvency II Legal Group	General Comment	This response reflects the views of the following law firms, which all have clients in the UK and wider European (re)insurance sector and have formed an open group to discuss legal issues raised by the Solvency II Framework Directive: Allen & Overy LLP; Clifford Chance LLP; Clyde & Co; Dewey LeBeouf LLP; Edwards Angell Palmer & Dodge UK LLP; Freshfields Bruckhaus Deringer LLP; Herbert Smith LLP; Linklaters LLP; Lovells LLP; Norton Rose LLP; Slaughter and May; Simmons & Simmons and	Noted

			Robert Purves, 3 Verulam Buildings (Barrister). General comment 1: Although it is not entirely clear, it appears that CEIOPS intends the principles developed in consultation paper CP 52-09 to apply equally irrespective of whether the SCR is calculated by the standard formula or by use of an internal model (noting the special reference to the standard formula in para 3.22). We welcome this approach. However, we note that CP 56-09 (on internal models) adopts the same principles that are set out in CP 31-09 (see para 5.260 of CP 56-09) and appears to apply these principles to both reinsurance and non-reinsurance risk mitigation. However, CP31-09 itself states that it does not apply to reinsurance (see para 3.5). Since the principles in CP 31-09 and the principles in CP 52-09 are expressed differently, it would be helpful if CEIOPS would clarify which of them it proposes should apply in respect of reinsurance to a (re)insurer which calculates its SCR using an internal model. We would encourage CEIOPS to develop a single set of core qualitative principles which apply to the use of risk mitigation techniques irrespective of whether the SCR is calculated by the standard formula or by use of an internal model, and irrespective of whether the risk mitigation technique takes the form of reinsurance or non-reinsurance. These requirements can be supplemented as necessary to reflect the differences between the two approaches to calculating the SCR. General comment 2: We welcome the fact that the proposals for reinsurance mitigation in CP 52-09 take the form of principles rather than over-	We do not agree. The advice in CP52 and CP31 only applies to the Standard formula SCR. Please refer to CP56 for internal models. We do note agree. Due to the particularities on the standard formula it is not always possible to set requirements which are also applicable to internal model. Noted

			prescriptive rules. By contrast, we have some concern that the proposals in CP 31-09 (on non-reinsurance risk mitigation) and CP 56-09 (on internal models) are more prescriptive. In our view, the general principles in relation to risk transfer and taking credit only for the economic effect should be sufficient. The greater detail in CP 31-09 and 56-09 reduces clarity and may have unintended consequences, as have been experienced under the Capital Requirements Directive (which applies to banks) where prescriptive rules have created doubt about whether some forms of risk transfer (such as sub-participations, set-off and netting arrangements under non-standard agreements, and credit insurance) may be taken into account, even though there is no doubt about their economic effectiveness. General comment 3: We welcome the fact that CEIOPS does not propose that (re)insurers should be treated differently according to the extent to which they rely on reinsurance. We note that in CP 31-09, CEIOPS proposed that risk mitigation techniques should be a consequence of an overall risk management policy, and should not be "cherry picked" to reduce capital requirements (see paras 3.23© and 3.29). We were concerned that that this requirement might be used to deny credit to (re)insurers (particularly smaller (re)insurers) who use non-reinsurance risk management techniques only occasionally, when they have a particular need. General comment 4: We note that in CP31-09 (para 3.14), CEIOPS proposed that (re)insurers should ensure that they have the ability to cancel or reduce a non-reinsurance risk mitigation instrument. We welcome the fact that CEIOPS is not proposing an equivalent requirement for	Noted Noted

			reinsurance. We would urge caution in the development of any such requirements, particularly if these requirements might require the (re)insurer to negotiate unusual terms with providers of the instruments who might not be receptive (such as counterparties under derivatives). If CEIOPS thinks (re)insurers may need to negotiate specific terms then it would be helpful if this could be stated in guidance, as such guidance would assist in persuading the counterparty to accept such terms. General comment 5: CEIOPS may wish to consider whether any special provisions should be introduced to address: (a) rights of set-off; or (b) the relative benefits of funded and unfunded reinsurance and other risk mitigation techniques (eg deposit-back or funds withheld reinsurance).	Noted. Such quantitative issues are covered in the counterparty default module CP51
25.	XL Capital Ltd	General Comment	We agree with the high level principles-based approach taken by CEIOPS in CP 52.	Noted
26.	Solvency II Legal Group This response reflects the	1.2.	We do not consider that "financial mitigation techniques" should be considered entirely separately from reinsurance techniques. In our view, it would be better to develop a single set of core qualitative principles for both reinsurance and non-reinsurance mitigation techniques, with appropriate adjustments where necessary to take account of the special features of a particular technique. This is particularly important because non-reinsurance techniques are sometimes used to transfer insurance risk (for example, a mortality swap) and reinsurance is sometimes used to transfer non-insurance risk (for example, investment risk on a portfolio of assets). We note that this approach appears to have been adopted in relation to internal models in CP 56-09 (see paras 2.257 et seq), but not in relation to risk mitigation in the SCR standard formula in	Noted. CEIOPS considers that some of the requirements for financial risk mitigation are too strict for reinsurance arrangements Noted. The advice on internal models is separate to that from

			CP 31-09 (which states in para 3.5 that it does not apply to reinsurance).	the standard formula
27.	CRO Forum	1.3.	The start of the second sentence should be capitalized.	Noted
28.			Confidential comment deleted	
29.	PricewaterhouseCoopers LLP	1.5.	Section 3 of the Level 1 text defines risk mitigation technique as "all techniques, which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party". Paragraph 1.5 states that the focus of the advice is on reinsurance and securitisation transactions. This may imply that other risk mitigation techniques, for example ILWs are weather derivatives, are excluded, unless CEIOPS considers these to be within the scope of "reinsurance and securitisation arrangements". We request CEIOPS clarifies whether these techniques are included within the scope set out in paragraph 1.5, and if they are excluded where CEIOPS will consider them. We note that paragraphs 3.1 and 3.23 imply that all types of risk mitigation technique are included.	Noted. See response to comment 28
30.	PricewaterhouseCoopers LLP	1.5.	Section 3 of the Level 1 text defines risk mitigation technique as "all techniques, which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party". Paragraph 1.5 states that the focus of the advice is on reinsurance and securitisation transactions. This may imply that other risk mitigation techniques, for example ILWs are weather derivatives, are excluded, unless CEIOPS considers these to be within the scope of "reinsurance and securitisation arrangements". We request CEIOPS clarifies whether these techniques are included within the scope set out in paragraph 1.5, and if they are excluded where CEIOPS will consider them. We note that paragraphs 3.1 and 3.23 imply that all types of risk mitigation technique are included.	Noted. See response to comment 28

31.	CRO Forum	2.2.	The text shown from article 109 sections (e) and (f) is not easy to read, though the intent is clearly to establish what implementing measures the Commission needs to adopt. It just does not read that well. Instead, try replacing the existing text with "(e) Implementing measures regarding methods and assumptions: where insurance and reinsurance undertakings use risk mitigation techniques, the Commission shall establish the methods and assumptions to be used to : assess the changes in the risk profile of the undertaking concerned and : adjust the calculation of the Solvency Capital Requirement." "(f) Implementing measures regarding qualitative criteria: The Commission shall establish the qualitative criteria that the risk mitigation techniques referred to in point (e) must meet in order to ensure that the risk has been effectively transferred to a third party"	Noted. The level 1 text has already been agreed, so changes at this level are not possible under this CP.
32.	GROUPAMA	2.2.	The reference to the articles of the Directive (Level 1) is not good: it is not Article 109 (1) (e) and (f) to consider, but Article 109 (1) (d) and (e).	Noted. See response to comment 31.
33.	DIMA (Dublin International Insurance & Management	3.	The points under the first principle "Effective Risk Transfer" seem to suggest an all or nothing allowance for reinsurance credit in the SCR. This seems contrary to the principle that the SCR should reflect the economic reality of the assets and liabilities of the undertaking, and also appears to discourage some sound risk management practices.	Noted.
34.	Munich RE	3.1.	3.1.2.: It should be clarified that this section is not to be confused with a risk transfer test in the accounting sense which draws a red	Noted. This scope of this paper is for the Standard formula SCR.

			line between agreements that may be accounted for in the underwriting section of the P&L and those which need to be treated by deposit accounting.	Advice on reinsurance recoverables is covered under CP39.
35.	PricewaterhouseCoopers LLP	3.1.	See our comments on paragraph 1.5.	See our responses to paragraph 1.5
36.	PricewaterhouseCoopers LLP	3.1.	See our comments on paragraph 1.5.	See our responses to paragraph 1.5
37.	ECIROA	3.3.	Consideration of reinsurance risk mitigation techniques whether it might be a proportional and non-proportional set-up should be recognised in the calculation of the SCR using the standard formula and/or any other simplifications.	We partially agree. Reinsurance mitigation techniques shall be recognised if they meet the principles laid down in CP 52
38.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURANCES DU	3.4.	Agree guidance at "high-level" is welcome as opposed to extensive detailed guidance	Noted
39.	DIMA (Dublin International Insurance & Management	3.4.	As mentioned in the General Comment above, the proposal to set the guidance at high level is welcome.	Noted
40.	Groupe Consultatif	3.4.	We appreciate the ambition to keep the guidance on a high-level, instead of giving detailed guidelines which may soon be in conflict with new models/techniques in these areas.	Noted
41.	International	3.4.	We support a principles based approach, and that guidance should	Noted

	Underwriting Association of London		be high-level. Detailed rules would be unsuitable and inflexible, and could stifle innovation.	
42.	International Underwriting Association of London	3.5.	We agree that reinsurance is an important risk management tool used within the insurance industry to spread the uncertain cost of risk exposure over a larger capital base.	Noted
43.	DIMA (Dublin International Insurance & Management	3.6.	This paragraph states that the intention of a reinsurance contract may not always be evident in its wording. This comment is anchored in Solvency 1 and perhaps more pertinent to non-life than life reinsurance where stress tests are used rather than factors on premiums and reserves. Rather than try to allow for this by developing particular conditions, it would be preferable to require undertakings taking credit for reinsurance to have contract wording which reflects the intention of the contract.	Noted
44.	Lloyd's	3.6.	We agree that effective risk transfer is a key criterion for accepting the risk mitigating impact of reinsurance arrangements.	Noted
45.	XL Capital Ltd	3.6.	We agree that the intention of a reinsurance contract may not always be evident in its wording and in such cases it is necessary to look at whether arrangements satisfy conditions for risk transfer. This would also be broadly consistent with approach required by IFRS accounting.	Noted
46.	ACA – ASSOCIATIO N DES COMPAGNIE S D'ASSURAN CES DU	3.7.	How to define if the risks are significant?	Noted. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms

				.
47.	Belgian Coordination Group Solvency II (Assuralia/	3.7.	Insurance risk transfer: we recommend including "stop-loss" as well in order to mention the 4 classical forms of reinsurance. The reinsurance market has always developed new mitigating tools next to the classical forms of reinsurance. In that context, ILW (Industry Loss Warranty), OLW (Original Loss Warranty) or other mitigating tools should also be made possible. The text is limited to reinsurance and catastrophe bonds. We are recommending including ILW/OLW or all other mitigating tools in the text. Basis risk should be handled in the same way than for cat bonds. Assumption of significant but limited risk: we recommend adding "reinstatements".	We do not agree. Our intention is to capture all arrangements that have the economic effects of reinsurance, in line with principle 2. For further clarification on the treatment of basis risk please refer to responses to comment 4 Noted. However this is a non exhaustive list.
48.	CRO Forum	3.7.	We fully agree to the principle that only effective risk transfer shall create a SCR benefit.	Noted
49.	DIMA (Dublin International Insurance & Management	3.7.	If certain features of a reinsurance contract reduce the effective risk transfer (e.g. finite reinsurance) then undertakings should reflect this in the credit that they take in their SCR calculation.	Noted
50.			Confidential comment deleted	
51.	CRO Forum	3.10.	It should be clarified that this section is not to be confused with a risk transfer test in the accounting sense which draws a red line between agreements that may be accounted for in the underwriting section of the P&L and those which need to be treated by deposit accounting (this refers to section 3.1.2. in the CP).	See response to comment 34

Summary of Comments on CEIOPS-CP-52/09 Consultation Paper on the Draft L2 Advice on SCR Standard Formula - Reinsurance mitigation				
52.	Belgian Coordination Group Solvency II (Assuralia/	3.11.	We are welcoming the proposal to establish high-level principles in order to support on-going development. Solvency II shall clearly change some habits in respect of reinsurance and innovation shall be welcome.	Noted
53.	CEA, ECO-SLV-09-447	3.11.	We agree that the advice needs to be as principles-based as possible as reinsurance arrangements are evolving. We expect that some parts of the advice would apply less rigorously when a widely accepted reinsurance arrangement is being considered.	Noted
54.	DIMA (Dublin International Insurance & Management	3.11.	The proposal by CEIOPS to establish high level principles rather than detailed rules is welcome.	Noted
55.	International Underwriting Association of London	3.11.	We also agree with this paragraph, and the allowance of risk mitigation techniques should not constrain innovation.	Noted
56.	Lloyd's	3.11.	We strongly agree. It is not appropriate to use a rules-based approach.	Noted
57.	Association of British Insurers	3.13.	We agree that effective risk transfer is important before credit can be taken in the SCR calculation	Noted
58.	CEA, ECO-SLV-09-447	3.13.	We agree to the principle that only effective risk transfer shall create a SCR benefit.	Noted

59.	CRO Forum	3.13.	We fully agree to the principle that only effective risk transfer shall create a SCR benefit.	Noted
60.	Groupe Consultatif	3.13.	Only the part of an eventual premium ceded is totally known already when the treaty is signed, but the exact risk transfer may in many cases only be possible to estimate.	Noted
61.	Legal & General Group	3.13.	We agree that effective risk transfer is important before credit can be take in the SCR calculation.	Noted
62.	Munich RE	3.13.	We fully agree to the principle that only effective risk transfer shall create a SCR benefit.	Noted
63.	XL Capital Ltd	3.13.	We agree with the broad principle that only risk mitigation techniques which effectively transfer risk should result in a reduction in SCR. These comments also apply to paragraph 3.39	Noted
64.	ACA – ASSOCIATIO N DES COMPAGNIE S D'ASSURAN CES DU	3.14.	Most reinsurance treaties are likely to be well defined and generally beyond disputes. However dispute do occur so perhaps wording should be "believed beyond dispute"	Noted. See response to comment 16.
65.	Association of British Insurers	3.14.	This paragraph is quite concerning and could have unintended consequences, preventing an appropriate recognition of risk transfer "would allow the third party unilaterally to cancel the transaction, except for the non-payment of monies due from the undertaking to the third party under the contract". In many cases there will be defined circumstances where such a clause can operate. This is not unusual and should not necessarily invalidate	Noted. CEIOPS emphasises that the words "shall take into account" mean just that and that the examples provided in the responses indicate that the way the tests are met or not met can be as relevant as the fact that

			the recognition of risk transfer. We agree with the principle that the contract should not include items where significant discretion can be exercised against the undertaking. However, we are keen that the emphasis is given to the fact that there can still be an effective transfer of risk even in the situations described in the bullet points. Some of these items exist in current treaties and are likely to be required in future agreements on commercial grounds. Below are examples: 3rd bullet, 1st Sub bullet: The reinsuring party typically has the ability to cancel the agreement if it becomes legally impossible to fulfil the terms of the treaty. It would be difficult to find counterparties if such terms are excluded. 3rd bullet, 2nd Sub bullet: In the case of certain underwriting failures, there may be no reinsurance recoveries. 3rd bullet, 3rd Sub bullet: Reviewable contracts (e.g. those used for reviewable critical illness products) may contain a degree of basis risk and may not be guaranteed to remain consistent with the premium charged by the direct writer of the business. 3rd bullet, 5th Sub bullet: If monies due but unpaid under one treaty are used to offset monies on another. In addition, some contracts have a recapture clause as an option for the reinsured party, which might invalidate this.	they are or are not met. Also please note that where applicable and relevant proportionality may be taken into account.

			In practice there are other possibilities of unilateral cancellation, apart non-payment of monies, which do allow for an effective risk transfer: : Extraordinary cancellation by virtue of contractual agreement. This comes in at least the following forms: general right of extraordinary cancellation for both parties, which presupposes an explicit agreement and risk specific extraordinary right of the reinsurer, with examples like terrorism and war in marine business. : Extraordinary cancellation on serious grounds and due to a change in the contract. In practice there are reinsurance treaties, which provide for variable cost as sliding excess of loss rates or loss participation, within reasonable limitations. They respect the features of an effective risk transfers as long as the residual risk for the reinsurer remains material. The CEIOPS drafting would also cover life treaties where the reinsurer has the ability to review premium rates. Typically this still leaves the cedent with significant risk protection particularly against extreme events and should not be a reason to deny risk transfer. Risk transfer should be allowed in case amounts due to the reinsured undertaking under one treaty are set off against overall obligations between the same parties. Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel, which replaces ordinary jurisdiction. Due to the extended term of alternative risk transfer (3 -5 years), compared to traditional reinsurance (mostly 1 year), "model resets" are often foreseen in the documentation. Meaning that the trigger	

			(and consequently the risk) will be adjusted in the years 2 and following, in case the : odelled risk analysis changes. This may end up in an uplift of the attachment point, but does not reduce the likelihood of a third party loss. It just adapts the risk to a new model to keep constant expected loss level due to new experience. Thus "model resets" need to be excluded from the provision.	
66.			Confidential comment deleted	
67.	Belgian Coordination Group Solvency II (Assuralia/	3.14.	In the current reinsurance market, the treaties are defining other reasons than no payment for the automatic termination of a contract. Change in control of the insurance companies and other clauses are standard. It is difficult and probably not the purpose of the standard formula to define a comprehensive and limitative list. But, reference could be made to standard market practises and the absence of change in the economic value of the risk mitigation in normal circumstances?	Noted. See response to comment 65
68.	CEA, ECO-SLV-09-447	3.14.	This paragraph is concerning since it may obstruct recognition of risk transfer in many cases; some example are listed below. Risk transfer should be allowed if conditions provide unilateral cancellation not only in case of non-payment of moneys. Extraordinary cancellation by one party may still be necessary if it becomes impossible to execute the contract in its original intentions, i.e. in the case of e.g. war, change of ownership/control or similar developments. In practice there are reinsurance treaties which provide for variable cost as sliding excess of loss rates or loss participation, within reasonable limitations. They respect the features of an effective risk transfers as long as the residual risk for the reinsurer remains material. The CEA asks Ceiops also about how are reinstatements considered	Noted. See response to comment 65

			in the light of this sub bullet point. Risk transfer should be allowed in case a reinsurance agreement is combined with a rehabilitation plan for the underlying business ("altering" the risk) which has been agreed upon prior to its conclusion. „Rehabilitation plan" is a plan to : odelled: /improve profitability by various means for a portfolio producing negative results. Risk transfer should be allowed in case amounts due to the reinsured undertaking under one treaty are set off against overall obligations between the same parties. Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction. Due to the extended term of alternative risk transfer (3 -5 years), compared to traditional reinsurance (mostly 1 year), "model resets" are often foreseen in the documentation. Meaning that the trigger (and consequently the risk) will be adjusted in the years 2 and following, in case the modelled risk analysis changes. This may end up in an uplift of the attachment point, but does not reduce the likelihood of a third party loss. It just adapts the risk to a new model to keep constant expected loss level due to new experience. Thus "model resets" need to be excluded from the provision.	
69.	CRO Forum	3.14.	Some of the bullet points in advice 3.14 are appropriate but could be taken to exclude arrangements which we think should be recognised as providing effective risk transfer. The following are examples which do not give grounds for non recognition; 3rd para, 1st set:	Noted. See response to comment 65.

			Risk transfer should be allowed if conditions provide unilateral cancellation not only in case of non-payment of monies. Extraordinary cancellation by one party may be necessary if it becomes impossible to execute the contract in its original intentions, i.e. in the case of e.g. war, change of ownership/control or similar developments. 3rd para, 2nd set: Effective risk transfer should be allowed for transfer forms which provide variable cost such as sliding scale of commission, sliding excess of loss rates or loss participation clauses within reasonable limitations, if the (reinsuring) third party is faced with a material residual risk. The CEIOPS drafting would also cover life treaties where the reinsurer has the ability to review premium rates. Typically this still leaves the cedant with significant risk protection particularly against extreme events. 3rd para, 3rd set: Risk transfer should be allowed in case a reinsurance agreement is combined with a rehabilitation plan for the underlying business ("altering" the risk) which has been agreed upon prior to its conclusion. 3rd para, 5th set: Risk transfer should be allowed in case amounts due to the reinsured undertaking under one treaty are set off against overall obligations between the same parties. 3rd para, 6th set: Risk transfer should be allowed if, in case of difference, the	

			agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction. As a consequence this implies that no terms or conditions are acceptable, which impede the transfer of risk or will lead to a later short-fall of the reinsurance coverage. From this perspective post closing alterations of the transferred risk shall not be allowed. Due to the extended term of alternative risk transfer (3 -5 years) compared to traditional reinsurance (mostly 1 year) "model resets" are often foreseen in the documentation. Meaning that the trigger (and consequently the risk) will be adjusted in the years 2 and following in case the modelled risk analysis changes. This may end up in an uplift of the attachment point, but does not reduce the likelihood of a third party loss. It just adapts the risk to a new model to keep constant expected loss level due to new experience. Thus "model resets" need to be excluded from that provision.	
70.	DIMA (Dublin International Insurance & Management	3.14.	First bullet point: The documentation associated with the reinsurance should be required to reflect the economic substance of the transaction. Third bullet: The fact that the transaction contains terms or conditions outside the direct control of the undertaking does not mean there is no risk transfer. In some cases it may not be possible to obtain reinsurance without some of these features (e.g. some element of profit-sharing). The undertaking should be allowed take some credit (if not all) for this reinsurance.	Noted and agreed. Noted. See response to comment 65.
71.	European Union member firms of Deloitte Touche To	3.14.	We believe that the detailed requirements regarding the transfer of risks from the undertaking to the third party are very restrictive, e.g. allowing the third party to unilaterally cancel the transaction.	We do not agree. See response to comment 65.

72.	Groupe Consultatif	3.14.	Many treaties are hard to read if not being a reinsurance specialist. The second bullet may affect the wordings in future reinsurance treaties, which in many cases would be clarifying.	See response to comment 65.
73.	International Underwriting Association of London	3.14.	Whilst we understand the principles behind the statement that "the transfer of risk from the undertaking to the the third party shall be effective in all circumstances" and that the "extent of the risk transfer is clearly defined and beyond dispute", we feel it is also important to recognise that legal disputes can arise, even where the utmost legal certainty is sought in the contract drafting. This uncertainty cannot be entirely removed, and may cast into doubt whether the contract is effective in "all circumstances". Furthermore whether a contract responds might not be able to be determined until after due legal process. We would anticipate that most legal contracts would have some potential possibility for legal dispute (although it is important to note that in reality most contracts are fulfilled without dispute) and we therefore have concerns whether a stringent interpretation of these principles could be applied to many if not all reinsurance contracts. It should also be noted that legal disputes do not necessarily arise from the drafting of a contract, and may be over the interpretation of a contract in the context of the factual matrix surrounding a claim.	Noted. See response to comment 65.
74.	Legal & General Group	3.14.	We agree with the principle that the contract should not include items where significant discretion can be exercised against the undertaking. However, we are keen that the emphasis is given to the fact that there can still be an effective transfer of risk even in the situations described in the bullet points. Some of these items exist in current treaties and are likely to be required in future agreements on commercial grounds. Below are examples: 3rd bullet, 1st Sub bullet: The reinsuring party typically has the ability to cancel the	Noted. See response to comment 65.

			agreement if it becomes legally impossible to fulfil the terms of the treaty. It would be difficult to find counterparties if such terms are excluded. 3rd bullet, 2nd Sub bullet: In the case of certain underwriting failures, there may be no reinsurance recoveries. 3rd bullet, 3rd Sub bullet: Reviewable contracts (e.g. those used for reviewable critical illness products) may contain a degree of basis risk and may not be guaranteed to remain consistent with the premium charged by the direct writer of the business. 3rd bullet, 5th Sub bullet: If monies due but unpaid under one treaty are used to offset monies on another. In addition, some contracts have a recapture clause as an option for the reinsured party which might invalidate this. The criteria must be practical and reflect the reality of effective risk transfers in the market as evidenced above. Also applies to section 3.40	
75.	Lloyd's	3.14.	We agree with the sentiment of this paragraph but suggest it is reworded in places. The requirement of "beyond dispute" is difficult, if not impossible, to satisfy. Reinsurance disputes do occur (but would not be seen at the outset of the policy) which means this measure would be impossible to meet as a test, as no reinsurance policy is beyond dispute. The words "and beyond dispute" should be removed or amended to "and expected to be beyond dispute".	Noted. See response to comment 65.

			Furthermore, the paragraph refers to the extent of that transfer. In the SCR calculation the extent of the transfer is a modelled amount and therefore "beyond dispute" is inappropriate wording (no modelled amounts are beyond dispute). Sub-bullet three. We are uncertain as to the situation this is referring to and perhaps an example may help. Sub bullet seven. It is clearly out of the control of the undertaking for a contract to be enforceable in all jurisdictions. This is an unrealistic expectation. Most reinsurance contracts will cover many jurisdictions and it would be disproportionate to investigate enforceability in all of them. This bullet point should be amended to "determine under which law, court and jurisdiction any disputes are to be resolved".	
76.	Munich RE	3.14.	3rd para, 1st set: Risk transfer should be allowed if conditions provide unilateral cancellation not only in case of non-payment of monies: - Extraordinary cancellation by virtue of a contractual agreement o General right of extraordinary cancellation for both parties This gives each party the right to unilaterally cancel the contract prematurely without observing a period of notice. Such cancellation always presupposes an explicit agreement. Invoking reinsurance custom is not permissible. O Risk-specific extraordinary cancellation right of the reinsurer Where special risks are involved that are particularly exposed to accumulations, it is usual to tighten up or define in more detail the general right of cancellation – sometimes stipulating specific periods of notice – and this is normally an essential prerequisite for their reinsurability, possibly along with	Noted. See response to comment 65.

			adherence to additional internal budget requirements. Examples: terrorism and war in marine business. - Extraordinary cancellation on serious grounds and due to a change in the contract or frustration of contract Insurance and reinsurance contracts are contracts for the performance of a continuing obligation and, according to general legal principles, can therefore be cancelled on serious grounds even without an agreement to this effect. Serious grounds exist if it is unreasonable for the cancelling party to abide by the contract: fluctuations in security without an imminent risk of insolvency are certainly not sufficiently serious, nor is the risk of unexpected accumulations or changes in the market environment, e.g. in the form of intervention by law in insurance and reinsurance conditions. 3rd para, 2nd set: effective risk transfer should be allowed for transfer forms which provide variable cost such as sliding scale of commission, sliding excess of loss rates or loss participation clauses within reasonable limitations, if the (reinsuring) third party is faced with a material residual risk. 3rd para, 3rd set: risk transfer should be allowed in case a reinsurance agreement is combined with a rehabilitation plan for the underlying business ("altering" the risk) which has been agreed upon prior to its conclusion. 3rd para, 5th set: risk transfer should be allowed in case amounts due to the reinsured undertaking under one treaty are set off against overall obligations between the same parties. 3rd para, 6th set: risk transfer should be allowed if, in case of	

			difference, the agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction. **3.28: same comment** As a consequence this implies that no terms or conditions are acceptable, which impede the transfer of risk or will lead to a later short-fall of the reinsurance coverage. From this perspective post closing alterations of the transferred risk shall not be allowed. Due to the extended term of alternative risk transfer (3 -5 years) compared to traditional reinsurance (mostly 1 year) "model resets" are often foreseen in the documentation. Meaning that the trigger (and consequently the risk) will be adjusted in the years 2 and following in case the modelled risk analysis changes. This may end up in an uplift of the attachment point, but does not reduce the likelihood of a third party loss. It just adapts the risk to a new model to keep constant expected loss level due to new experience. Thus "model resets" need to be excluded from that provision.	See response to comment 3.28
77.	RBSI	3.14.	Reinsurance contracts contain a Special Cancellation Clause for immediate cancellation in the event of certain circumstances, some of which are outside of the control of the parties. However, as this section relates to "Effective Risk Transfer", we have assumed that special cancellation is not relevant here as risk transfer considerations do not form part of this provision.	Noted. See response to comment 65
78.	XL Capital Ltd	3.14.	The third point, first sub-bullet requires an entity to allow for conditions that may allow a third party to unilaterally cancel a transaction. In some contracts there are "change of control" provisions which arguably are outside the control of the entity. However, normally such "change of control" provisions only allow a prospective cancellation of the protections and as such would allow the entity to take credit up to the point of any change of control. We therefore do not see this as an issue.	Noted. See response to comment 65.

			Other possibilities of unilateral cancellation apart from the non-payment of monies which do allow for an effective risk transfer include : Change of control provisions or in some cases ratings downgrade and or Book value triggers and : Extraordinary cancellation by virtue of contractual agreement. This comes in at least the following forms: o General right of extraordinary cancellation for both parties, which presupposes an explicit agreement and risk specific extraordinary right of the reinsurer, with examples like terrorism and war in marine business. O Extraordinary cancellation on serious grounds and due to a change in the contract. These comments also apply to paragraph 3.40	
79.	CEA, ECO-SLV-09-447	3.16.	In practice, multiple reinsurers subscribe at varying shares to the different outgoing reinsurance contracts of an undertaking. Considering the entire legal relationship with a reinsurer in judging the transfer of risk of a share in a reinsurance contract seems impractical. As such, in determining the effectiveness of a risk transfer, the legal relationship should be followed by looking at the entire contract under scrutiny and the other contracts/shares of contracts economically linked to it only.	Noted.
80.	CRO Forum	3.16.	Typically multiple reinsurers subscribe varying shares of the different outgoing reinsurance contracts of a company. Hence it seems impractical to require a consideration of the entire legal relationship. We rather recommend to determine the risk transfer for "the entire contract and all economically linked contracts. A	Noted. See response to comment 79

			contract is economically linked if it increases, decreases or mitigates the risk transferred by the first contract and it is entered into by the same or closely related parties.”	
81.	Munich RE	3.16.	Typically multiple reinsurers subscribe varying shares of the different outgoing reinsurance contracts of a company. Hence it seems impractical to require a consideration of the entire legal relationship. We rather recommend to determine the risk transfer for “the entire contract and all economically linked contracts. A contract is economically linked if it increases, decreases or mitigates the risk transferred by the first contract and it is entered into by the same or closely related parties.” : 3.17: same comment	Noted. See response to comment 79
82.	XL Capital Ltd	3.16.	We agree that the entire contract should be considered. These comments also apply to paragraph 3.43	Noted. See response to comment 79
83.	XL Capital Ltd	3.17.	We agree that the entire legal relationship should be considered. This comment also apply to paragraph 3.43	Noted
84.	Association of British Insurers	3.18.	It would be helpful to include emphasis in this paragraph that there can still be an effective transfer of risk even in the situations described in the bullet points of 3.14. For example, the mere fact that items in 3.14 may occur does not in itself mean that the reinsurer has not assumed significant risk.	Noted
85.	GROUPAMA	3.18.	Ok but not very clear, waiting for details of the risk “significant” at level 3.	Noted. CEIOPS does not wish to be to perspective
86.	Legal & General	3.18.	It would be helpful to include emphasis in this paragraph that there can still be an effective transfer of risk even in the situations	Noted. See response to comment 85

	Group		described in the bullet points of 3.14. e.g. "the mere fact that items in 3.14 may occur does not in itself mean that the reinsurer has not assumed significant risk. Also applies to section 3.41	
87.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURANCES DU	3.19.	Ceiops notes:"If basis risk is not material, no allowance to consider the mitigation instrument on the calculation of SCR", but how to define a non material risk?	Noted. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms .
88.	Association of British Insurers	3.19.	This paragraph implies that only very minor basis risk is acceptable. We agree that basis risk would need to be allowed for but such a requirement may significantly limit reinsurance based on indexes e.g. for mortality. We propose instead that capital needs to be set aside to cover basis risk.	Disagree. There may be a few contracts where we might safely ignore basis risk. However for some instruments where the trigger for recovery is different from the size of the reinsured's loss, then there is the possibility that the instrument will not respond (sufficiently), despite a significant loss for the reinsured from the event. It is also possible that the recovery is greater than expected. For such a contract there is no obvious way to deal with it in the standard SCR. Therefore it is necessary under the standard formula to restrict the level of basis risk allowed.

				Firms with material basis risk can seek (partial)IM approval.
89.			Confidential comment deleted	
90.	Belgian Coordination Group Solvency II (Assuralia/	3.19.	It should not be limited to SPV but should also include any index based transaction like ILW/OLW for example.	Disagree. See response to comment 88.
91.	CEA, ECO-SLV-09-447	3.19.	Risk mitigation techniques, including securitizations, are important mitigation techniques which benefit both insurance undertakings and their policyholders. As such they should be allowed for in the Solvency II calculation on an economic basis. Even if risk mitigation is only partial due to basis risk, it should nevertheless be recognized appropriately. The 4th sentence should be deleted consequently. The 5th sentence should be reworded to make it clear that the basic rule is that such techniques should be recognized as effective mitigation techniques. In case they present material basis risk, the undertaking should allow for the reinsurance mitigation technique but should also allow for the basis risk in line with the 99.5% confidence level of the SCR.	Disagree. See response to comment 88.
92.	CRO Forum	3.19.	Risk mitigation techniques should be in general allowed for in the Solvency II calculation on an economic basis. Even if risk mitigation is only partial due to basis risk, it should nevertheless be recognized appropriately. It shall be the obligation of the undertaking to demonstrate the appropriateness of the risk mitigation.	Disagree. See response to comment 88.

93.	DIMA (Dublin International Insurance & Management	3.19.	This appears to imply that the reinsurance has to match the original risks of the undertaking almost exactly or no credit at all is given. Reinsurance should simply be required to reduce the credit for reinsurance they take in their SCR calculation to reflect any basis risk.	Disagree. See response to comment 88.
94.	FFSA	3.19.	4.FFSA considers the use of securitization techniques (that seem to be covered in this comment) as an important risk mitigation technique that benefits both the insurance companies and their policyholders. In this context, FFSA does not understand the nature of CEIOPS' comment, which seems to jeopardize the use of such techniques. FFSA would like this section to be reworded to make it clear that the basic rule is that such techniques should be recognized as fully effective mitigation techniques, except if they contain a material basis risk. In such case, the undertaking shall allow for the reinsurance mitigation technique but shall also allow for the basis risk in line with the 99.5% confidence level of the SCR	Disagree. See response to comment 88.
95.			Confidential comment deleted	
96.	GROUPAMA	3.19.	It would be better to suggest a proportionate approach to take into account reinsurance techniques made on the basis of external indicators (Earthquake indicators), rather than the binary approach of the text "yes / no" asking for recognition of this reinsurance technique, a demonstration that the basis risk is insignificant / effects of mitigation	Disagree. See response to comment 88.
97.	Legal & General Group	3.19.	This paragraph implies that only very minor basis risk is acceptable. We agree that basis risk would need to be allowed for but such a requirement may significantly limit reinsurance based on indexes e.g. for mortality. We propose instead that capital needs to be set aside to cover basis risk.	Disagree. See response to comment 88.

			Also applies to section 3.44	
98.	Lloyd's	3.19.	The basis risk of certain reinsurance, be it based on indices or as a CAT bond, should not preclude those potential assets from being included in the SCR The current wording suggests that contracts with immaterial basis should be included. We disagree and suggest that such contracts are allowable but only if the basis risk has been adequately allowed for. (i.e. at a 99.5% confidence level) For example, the undertaking may be taking only say 50% of the recovery into account because they are 99.5% certain of that amount of recovery. Is the intention the whole of this recovery is to be excluded? Even if the original basis risk was calculated with 99.5% certainty? We would disagree if it was intended to exclude such situations.	Disagree. See response to comment 88.
99.	Lucida plc	3.19.	Although a reinsurance risk mitigation technique might include basis risk that is material, the technique could still significantly reduce risk and hence it should be permissible to make allowance for it (though recognising that consideration needs to be given to the impact of basis risk in the 99.5% scenario). This comment also applies to 3.44.	Disagree. See response to comment 88.
100.	Munich RE	3.19.	Risk mitigation techniques should be in general allowed for in the Solvency II calculation on an economic basis. Even if risk mitigation is only partial due to basis risk, it should nevertheless be recognized appropriately. It shall be the obligation of the undertaking to demonstrate the appropriateness of the risk mitigation. First we note that it is difficult and arguable to define the materiality of basis risk in an objective way.	Disagree. See response to comment 88.

			Secondly, the discontinuity of the approach (basis risk not material yields to full recognition in the SCR, basis risk material yields to no recognition) might lead to inadequate business decisions of the undertaking with respect to parametric risk transfer instruments in a way that an economically rational risk transfer will become unattractive. In light of the above, we suggest to always allow for recognition of alternative risk mitigation in the SCR and, in doing so, to also always take into account the basis risk of the alternative risk mitigation in the SCR. It can be further seen from the text that it shall be the obligation of the undertaking to assess the basis risk. In order to secure a consistent assessment of basis risk of different undertakings and in different transactions, Level 2 text should provide for common requirements defining the framework of calculating the basis risk and lay down high-level principles to ensure an equal treatment of basis risk. Such principles could be: 1. In order to be able to adequately measure basis risk, the undertaking has to identify in detail the indemnity layer for which the alternative risk mitigation transaction is designated for. 2. Assessment of basis risk must be consistent with the risk measurement principles of the undertaking, in particular it shall be consistent with the measurement of the underlying risk in the identified indemnity layer. 3. Basis chance (potential payouts of the alternative risk mitigation transaction which exceed potential losses of the identified	

			indemnity layer) shall not be recognised in the treatment of basis risk in the SCR. Generally, undertakings using the standard formula shall not be excluded from any allowance for alternative risk transfer. If an alternative risk transfer cannot be implemented into the standard formula, these undertakings shall be allowed to use partial models for calculating the SCR relief and the basis risk.	
101.	Pearl Group Limited	3.19.	Risk mitigation techniques should be in general allowed for in the Solvency II calculation on an economic basis. Even if risk mitigation is only partial due to basis risk, it should nevertheless be recognized appropriately.	Disagree. See response to comment 88.
102.	ROAM	3.19.	ROAM considers the use of securitization techniques (which seem to be covered in this comment) as an important risk mitigation technique benefiting both the insurance companies and their policyholders. In this context, ROAM does not understand the nature of CEIOPS' comment, which seems to jeopardize the use of such techniques. ROAM would like this section to be reworded to make it clear that the basic rule is that such techniques should be recognized as fully effective mitigation techniques, except if they contain a material basis risk. In such case, the undertaking shall allow for the reinsurance mitigation technique but shall also allow for the basis risk in line with the 99.5% confidence level of the SCR	Disagree. See response to comment 88.
103.	Solvency II Legal Group	3.19.	We do not agree with the requirement that basis risk must be immaterial in order for the risk mitigation technique to be eligible. The same requirement was proposed in relation to non-reinsurance mitigation in CP 31-09 (para 3.43). In addition to creating uncertainty over exactly what level of basis risk is immaterial, this requirement would prohibit risk mitigation techniques which provide the best available means of protection at a price which the	Disagree. See response to comment 88.

			(re)insurer can afford – for example, index-based reinsurance arrangements. We would prefer (re)insurers to be free to enter into risk mitigation techniques, irrespective of the level of basis risk, but only to receive credit in the SCR for the part of the risk mitigation technique which actually reduces the risks to which they are subject.	
104.	XL Capital Ltd	3.19.	This paragraph refers to special purpose vehicles but in essence relates to cat bonds/Industry loss warranty etc. where payments are made according to certain external indicators, for example an earthquake index. We disagree with the statement that "there should be no allowance of the risk mitigation instrument in the calculation of the SCR unless the undertaking can demonstrate that the basis risk is not material compared to the mitigation effect." We suggest that the requirement for the basis risk to be 'not material' is removed as we believe that such a requirement is not aligned with an economic view of reinsurance mitigation techniques and we recommend CEIOPS to recognize the existence of capital reduction for all cases and not only when basis risk is immaterial. Otherwise sound risk management practices may be disincentivised. These comments also apply to paragraph 3.44	Disagree. See response to comment 88.
105.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURAN	3.20.	The condition to consider or not the reinsurance arrangement is not enough clear What about life insurance?	Noted. See revised text. This only applies to the non life premium and reserve risk module in the standard formula

	CES DU			
106.			Confidential comment deleted	
107.	CEA, ECO-SLV-09-447	3.20.	Our understanding of advices 3.20-3.22 is that the capital relief of any reinsurance arrangement should correspond with the actual economic effects of the risk transfer. The advices are thus a check that the SCR credit for effective risk transfer does not exceed the "true" economic benefit during adverse 1 to 200 year scenarios. Due to the incomplete recognition of the economic benefit of non proportional transactions under the standard formula an appropriate check of the SCR credit of non prop transactions under the standard formula is not possible. Workable solutions of an improved assessment of the economic benefit of non prop transactions under the standard formula are thus needed.	Noted. See response to comment 106
108.			Confidential comment deleted	
109.	GROUPAMA	3.20.	The non-consideration of certain types of reinsurance techniques in the standard formula should be challenged. Any reinsurance technique should be allowed and considered in calculating the SCR standard formula, at least for its economic value or the mitigation effect provided (see in particular Article 3.23 of the same text).	Noted. See response to comment 106
110.	Lloyd's	3.20.	This provision is very important. It might be more clearly stated as follows: The ratio of (a) claim provisions at a 99.5% confidence level on a gross of reinsurance basis to (b) claim provisions at a 99.5% confidence level on a net of reinsurance basis is less than (or at least not significantly greater than) the ratio of (c) gross best estimate provisions to (d) net best estimate provisions.	Noted. See revised text for clarification.

			And The ratio of (e) forecast claims at a 99.5% confidence level on a gross of reinsurance basis to (f) forecast claims at a 99.5% confidence level on a net of reinsurance basis is less than (or at least not significantly greater than) the ratio of (g) gross best estimate forecast claims to (h) net best estimate forecast claims.	
111.	XL Capital Ltd	3.20.	This paragraph, along with 3.21, explains that where the assumption that the ratio of net-risk-to-gross-risk is less than the net-to-gross ratio of best estimate provisions and premiums is not valid, the non-life sub-module in the standard formula produces a wrong estimate of the net risk. We would welcome more guidance in this area, specifically concerning how this applies to non-proportional or non-standard types of reinsurance, including what alternative approaches can be taken if the ratios are not appropriate. We would request CEIOPS to clarify that this only applies to the standard formula and will not appear elsewhere in an Internal Model context, where we would expect more sophisticated calculations that do not rely on this assumption. These comments also apply to paragraphs 3.21 and 3.45	Noted. See response to comment 106
112.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURANCES DU	3.21.	This paragraph is not clear to us: does the ratio of net to gross risk refer to ratio of the SCR underwriting with a without the reinsurance arrangement?	noted

113.	CEA, ECO-SLV-09-447	3.21.	This paragraph sets out criteria for the ratio of net-to-gross risk, compared to the net-to-gross premiums and best estimate provisions. The risk measure needs to be explained in more detail in order to have a harmonised interpretation of its content. Also, the criteria do not include any particular considerations for the applicability of this to non-proportional or non-standard types of reinsurance, such as what alternative approaches can be taken if the ratios are not appropriate. For example it is common in non-proportional reinsurance, that the ratio of net to gross risk is smaller than the ratio of net to gross premium, i.e. that a significant and fairly stable "bulk business" is not reinsured. The test is not reasonable and Ceiops should work on further elaborating a more appropriate one.	Noted. See response to comment 106 and 112
114.	CRO Forum	3.21.	By comparing these ratios the acceptance for allowance would also be dependent on the pricing (premium ratio) of the risk transfer product. But criteria for the acceptance should be the risk effectively transferred and not a check whether pricing is adequate. Advice seems to disallow non proportional arrangements	Noted. See response to comment 112 and 106
115.	Groupe Consultatif	3.21.	For practical purposes, additional guidance should be given on how to interpret the sentence "...if the ratio of net to gross risk is in proportion with the reinsurance part of the best estimate and the premium. This would mean that the ratio of net to gross risk does not significantly exceed the net-to-gross ratio of premiums and best estimate provisions." In order to precisely define which reinsurance programs should be taken into account in the volume measures "net best estimate" and "net premiums".	Noted. See response to comment 112 and 106
116.	Institut des Actuaires	3.21.	For practical purpose, additional guidance should be given on how to interpret the sentence "...if the ratio of net to gross risk is in	Noted. See response to comment 112 and 106

	(France)		proportion with the reinsurance part of the best estimate and the premium. This would mean that the ratio of net to gross risk does not significantly exceed the net-to-gross ratio of premiums and best estimate provisions." In order to precisely define which reinsurance programs should be taken into account in the volume measures "net best estimate" and "net premiums".	
117.	Munich RE	3.21.	By comparing these ratios the acceptance for allowance would also be dependent on the pricing (premium ratio) of the risk transfer product. But criteria for the acceptance should be the risk effectively transferred and not a check whether pricing is adequate.	Noted. See response to comment 112 and 106
118.	RBSI	3.21.	Unclear what this is saying and requires explanation.	Noted. See response to comment 112 and 106
119.	ROAM	3.21.	This paragraph sets out criteria for the ratio of net-to-gross risk, compared to the net-to-gross premiums and best estimate provisions. The risk measure that is referred to is not explained in detail and more guidance is needed. Also, the criteria do not include any particular considerations for the applicability of this to non-proportional or non-standard types of reinsurance, such as what alternative approaches can be taken if the ratios are not appropriate.	Noted. See response to comment 112 and 106
120.	XL Capital Ltd	3.21.	See comments at paragraph 3.20 above	Noted. See response to comment 112 and 106
121.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURAN	3.22.	What about life premium?	Noted. This only applies to the non life premium and reserve risk module under the standard formula.

	CES DU			
122.	Association of British Insurers	3.22.	It is impossible to derive satisfactory definitions of 'finite re' . There is a wide spectrum of reinsurance structures and no bright lines between different structures. CEIOPS should elaborate at L2 or L3 the characteristics that need to be assessed and how these might be breached. We think 3.21 is not a reasonable test in general and would not apply it here. We advise CEIOPS to delete paragraph 3.22	We partially agree. See revised text. There are a wide variety of contracts and unfortunately in the non life context, it is not possible to capture them all under the standard formula SCR. As stated in par 3.19 and 3.45 we should not expect the standard formula to capture tailor-made instruments. Firms would need considerably greater understanding of its business to be able to make an intelligent purchase and in such cases it would be reasonable to expect IM treatment.
123.			Confidential comment deleted	
124.	CEA, ECO-SLV-09-447	3.22.	This paragraph refers to the prohibition of allowance for finite reinsurance and other comparable SPV constructions. The reason given is that these arrangements are tailor-made and not standard instruments, therefore not in the remit of the standard formula. However, many reinsurance instruments are tailor made and thus there is a wide spectrum of reinsurance structures and no bright lines between different structures. We advise Ceiops to delete paragraph 3.22.	We partially agree. See response to comment 122
125.	CRO Forum	3.22.	Risk mitigation techniques should be in general allowed for in the Solvency II calculation on an economic basis. In general there should be no disadvantage for an undertaking to	We partially agree. See response to comment 122

			use the standard formula as such meaning that certain forms of risk mitigation cannot be considered in the standard formula. SPV constructions are often tailor-made (however standardisation is increasing), but the standard formula could apply when certain parameters are met. The term finite reinsurance is used without proper explanation what CEIOPS understands as finite reinsurance. It is important to clarify this term to appropriately apply and enforce this principle as there is a wide spectrum of reinsurance structures and no bright lines between different structures. It should be up to the undertaking to prove that the agreement provides actual risk transfer which can be taken into account. See also 3.44	
126.			Confidential comment deleted	
127.	Munich RE	3.22.	Risk mitigation techniques should be in general allowed for in the Solvency II calculation on an economic basis. Even if risk mitigation is only partial due to basis risk, it should nevertheless be recognized appropriately. In general there should be no disadvantage for an undertaking to use the standard formula as such meaning that certain forms of risk mitigation cannot be considered in the standard formula. SPV constructions are often tailor-made (however standardisation is increasing), but the standard formula could apply when certain parameters are met. The term finite reinsurance is used without proper explanation what CEIOPS understands as finite reinsurance. It is important to clarify this term to appropriately apply and enforce this principle. : see also 3.44	We partially agree. See response to comment 122

128.	Belgian Coordination Group Solvency II (Assuralia/	3.23.	We are welcoming the proposal to consider the economic value of the transaction over the legal form.	Noted
129.	CEA, ECO-SLV-09-447	3.23.	We understand that Ceiops' intention is to allow for all risk effectively transferred irrespective of whether various accounting treatments of reinsurance are fulfilled (e.g. split between accounting in the UW section of a P&L or through deposit accounting).	noted
130.	DIMA (Dublin International Insurance & Management	3.23.	An essential point is misplaced, i.e. once the contracts are properly accounted for and admissible it doesn't matter what their form is.	Noted
131.	Lucida plc	3.23.	We welcome this point as we believe that this paragraph (and 3.46) would allow companies to treat longevity derivatives as reinsurance contracts in the context of this consultation paper. This comment also applies to 3.46.	Noted
132.	PricewaterhouseCoopers LLP	3.23.	See our comments on paragraph 1.5.	Noted
133.	PricewaterhouseCoopers LLP	3.23.	See our comments on paragraph 1.5.	Noted
134.			Confidential comment deleted	

135.	XL Capital Ltd	3.24.	This paragraph indicates that proportionality can be reflected in the risk mitigation allowance, via the "reduction in requirements commensurate with the extent of risk transfer". This seems to be at odds with 3.19 above, where material basis risk is grounds for exclusion of the reinsurance mitigation technique altogether. These comments also apply to paragraph 3.47	We do not agree. The grounds for exclusion of material basis risk are explained in response to comment 4.
136.	Groupe Consultatif	3.26.	Is the paragraph about counterparty risk? Examples should clarify if aiming at other risks than credit risk/counterparty risk.	Noted. The text means that where risk mitigation is allowed for you shall also consider the impact of this arrangement in all other modules.
137.	XL Capital Ltd	3.27.	This paragraph requires the undertaking to take account of low probability events that may trigger material changes in the way the reinsurance operates. This could be an issue since there could be low probability events, such as change of control, that, in effect, are so far into the tail that it would be inappropriate to allow for them in the standard formula.	Noted. Proportionality applies.
138.	Association of British Insurers	3.28.	Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration pane, which replaces ordinary jurisdiction.	Noted.
139.			Confidential comment deleted	
140.	CEA, ECO-SLV-09-447	3.28.	Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction.	Noted. See response to comment 138
141.	CRO Forum	3.28.	Refer to 3.14 (3rd para, 6th set)	Refer to responses regarding 3.14

142.	Lloyd's	3.28.	A test of legally enforceability in all relevant jurisdictions is an unrealistic expectation (even with the word "relevant" inserted). Most reinsurance contracts will cover many jurisdictions and it would be disproportionate to investigate enforceability in all of them. This bullet point should be amended to "determine under which law, court and jurisdiction any disputes are to be resolved".	Noted. See response to comment 138
143.	Munich RE	3.28.	Refer to 3rd para, 6th set	Refer to relevant responses
144.	Pearl Group Limited	3.28.	Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration pane, which replaces ordinary jurisdiction.	Noted. See response to comment 138
145.	RBSI	3.28.	Our reinsurance contracts are subject to English Law and contain a contract condition to this effect. We have assumed that this is what is required rather than contracts being legally enforceable in all relevant jurisdictions.	Noted. See response to comment 138
146.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURANCES DU	3.29.	Problem with the recognition of an undocumented or unverifiable technique, it is considered if it is any additional risk but not for the calculation of the SCR!!! Our concerns is that the recognition or not appears unfair or least unbalanced. If the negative charge of the mitigation technique has to be taken into account, it is fair that its positive aspect should also be taken into account.	We do not agree. If there are additional risks they should be reflected in the SCR as far as possible but we can place no reliance on undocumented contracts or on contracts of doubtful enforceability. If no allowance is made in the SCR for the protection provided by the contracts risks relating to the amount of that protection are not additional risks.
147.	DIMA (Dublin International	3.29.	Undertakings should be required to limit the benefit they take for reinsurance in the SCR calculation to reflect the fact that the effectiveness or ongoing enforceability cannot be verified. The	See response to comment 146

	Insurance & Management		extent of the limit should take into account the materiality of the reinsurance to the undertaking. For example, an undertaking using a large number of reinsurers in a large number of jurisdictions may be required to set a lower write-down on the benefit they take for reinsurance than an undertaking using one reinsurer in one jurisdiction.	
148.			Confidential comment deleted	
149.	GROUPAMA	3.29.	In this article, It'd be better to advise a proportional approach and not the binary approach developed for the documentation and the verification of enforceability to take into account reinsurance techniques in calculating the SCR standard formula	See response to comment 146
150.	Groupe Consultatif	3.29.	Needs clarifying. What is the meaning of "the mitigation technique is not documented" – who is responsible for contents of documentation? To be approved by whom? In what form?	See response to comment 146
151.	XL Capital Ltd	3.29.	This paragraph requires the risk mitigation to be documented before it can be taken into account. We request CEIOPS define 'documentation' and would assume a contract wording would suffice. These comments also apply to paragraph 3.50.	See response to comment 146
152.	ACA – ASSOCIATION DES COMPAGNIES D'ASSURANCES DU	3.30.	Most reinsurance contracts can be cancelled with notice. Saying to extent practical probably opens the door for inconsistent treatment across companies. Some stronger guidance would be welcomed here.	Noted. See revised text
153.			Confidential comment deleted	
154.	CEA,	3.30.	Though we don't see exactly how this requirement fits with the one	Noted. See revised text

	ECO-SLV-09-447		year time horizon, we understand the aim for the SCR standard formula to take also into account renewal or expiry of reinsurance arrangements. However how to implement it in practice is an issue in our opinion.	
155.	CRO Forum	3.30.	We agree that this paragraph addresses a risk that is so far not taken into account in the Solvency II methodology. However, we would suggest that CEIOPS takes a realistic view, i.e. best estimate assumption, and not a one sided negative one. Our opinion is supported by the fact that the majority of non-life business is renewed annually on January 1.	Noted. See revised text
156.	DIMA (Dublin International Insurance & Management	3.30.	It is not clear how the standard formula would allow for the possibility that reinsurance protection will not be renewed on expiry or will be renewed on adverse terms.	Noted. See revised text
157.	Groupe Consultatif	3.30.	This seems logical	Noted
158.	Lloyd's	3.30.	It is unclear how the SCR formula will allow for the non renewal or renewal at increased terms of reinsurance (except reinsurance covering CAT events). The standard formula uses expected premiums (net of reinsurance spend) as a base measure. Purchasing reinsurance on adverse terms (for example higher premium rates) would reduce net premiums and hence reduce the standard formula premium risk. We do not believe this is the intention and so more clarity is needed on this topic.	Noted. See revised text
159.	Munich RE	3.30.	We agree that this para addresses a risk that is so far not taken into account in the Solvency II methodology. However, we would suggest that CEIOPS takes a realistic view, i.e. best estimate	Noted. See revised text

			assumption, and a one sided negative one. Our opinion is supported by the fact that the majority of non-life business is renewed annually on January 1.	
160.	XL Capital Ltd	3.30.	In the event that reinsurance incepts mid term, it is important that there is an assumption that contracts can be renewed otherwise it would inaccurately sum the required capital based on the risk appetite of the organisation. However, since the standard formula requires a 'real time' calculation of the SCR/MCR, mid term policies would only impact the calculation at the point that the prior year contract ceases and at that time negotiations have normally been concluded for their replacement. These comments also apply to paragraph 3.51.	Noted. See revised text
161.	PricewaterhouseCoopers LLP	3.31.	Principle 4 is entitled 'Liquidity and valuation'. Paragraphs 3.31, 3.32 and 3.33 do not appear to cover this topic.	Noted. Consistency between CP31 and CP52 is aimed
162.	PricewaterhouseCoopers LLP	3.31.	Principle 4 is entitled 'Liquidity and valuation'. Paragraphs 3.31, 3.32 and 3.33 do not appear to cover this topic.	Noted Consistency between CP31 and CP52 is aimed
163.	DIMA (Dublin International Insurance & Management	3.32.	Where reinsurance risk mitigation techniques reduce risk, the capital requirement should in normal circumstances be lower than if there were no recognition in the SCR of such techniques. This gives some incentive for proper risk management.	Noted
164.	PricewaterhouseCoopers LLP	3.32.	See our comments on paragraph 3.31.	Noted. See revised text
165.	PricewaterhouseCoopers LLP	3.32.	See our comments on paragraph 3.31.	Noted. See our responses to paragraph 3.31

166.	Pricewaterhouse Coopers LLP	3.33.	See our comments on paragraph 3.33.	Noted. See our responses to paragraph 3.31
167.	Pricewaterhouse Coopers LLP	3.33.	See our comments on paragraph 3.33.	Noted. See our responses to paragraph 3.31
168.	XL Capital Ltd	3.33.	"Where the reinsurance risk mitigation techniques actually increase risk, the SCR shall be increased" This paragraph seems unrealistic, as by definition, if a technique increases risk it is NOT mitigation. We would therefore not expect this to occur in practice. These comments also apply to paragraph 3.54.	Noted. CEIOPS does not consider this unrealistic.
169.	CEA, ECO-SLV-09-447	3.34.	We support that credit quality of the provider or of the collateral posted shall be considered.	Noted
170.	CRO Forum	3.34.	We fully support that credit quality of the provider or of the collateral posted shall be considered.	Noted
171.	Munich RE	3.34.	We fully support that credit quality of the provider or of the collateral posted shall be considered.	Noted
172.	ACA – ASSOCIATION DES COMPAGNIES	3.35.	More further clarity on the treatment of the entities providing reinsurance risk mitigation and rated below BBB, what happens if the rating of the provider is downgrade In that Article, the reference for the credit quality of a reinsurer is his rating. It the entity is not rated, than it should be demonstrate	Noted. For further clarity see revised text. CEIOPS believes such requirements to be necessary under the standard formula SCR.

	D'ASSURANCES DU		that it correspond to a minimum rating of BBB. To be in harmony with points 3.71. to 3.83. of the CP51, it could be better to take account of the ratio OF/SCR for the unrated reinsurers.	CEIOPS does not support a "sliding scale" approach. Risk mitigation is either allowed in full or not, irrespective of the design of the counterparty risk module
173.	Association of British Insurers	3.35.	The rating needs to be expressed in the terms used by each of the ratings agencies – S&P, Moody's, AM Best and Fitch. We would welcome clarification of the term "demonstrate that they meet…" as there are a number of ways in which unregulated entities can gain additional security such as parental guarantees (from rated entities). We are concerned that this paragraph implies (based on reference to the Level 1 Directive) restrictions that only EU reinsurers and SPVs can be used to obtain reinsurance risk mitigation. There is a need to recognise that there are legitimate and suitably capitalised reinsurers outside of the EU and a criteria is required in order to determine how they will be judged.	Noted Disagree. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms See response to comment 172
174.			Confidential comment deleted	
175.	Belgian Coordination Group Solvency II	3.35.	Should the credit risk in a standard formula refer to a rating given by third parties? BBB definition and approach may vary between rating agencies.	Noted. See response to comment 5 and revised text

	(Assuralia/		In addition, it is difficult to define if a company meets the standard of a BBB company in view of lack of transparency in the definition of BBB. We are recommending to favour more pragmatic criteria like a minimum of diversification between reinsurers, maximum percentage per reinsurer in the premium risk, maximum percentage per reinsurer in the recoverables, etc; and to define some loadings in the SCR calculation when these maximum are exceeded.	
176.	CRO Forum	3.35.	*"Allowance is given to reinsurance risk mitigation provided by entities which are subject to the Level 1 text and are not in breach of the SCR. …"* The advice in this paragraph suggests that any reinsurance activity with a non-EEA re-insurer will not be considered as risk mitigation. This seems to ignore the equivalence principle, for reinsurers located in territories whose solvency regime is deemed to be equivalent to the Solvency II regulatory regime, as per Art.170 of the Directive. Although this advice seems consistent with Level 1 measures (Art. 170.2 – Equivalence), this can be impractical for group operations in non-EEA regions where local reinsurance arrangements can be more advantageous (e.g. lower currency risk, local market expertise, etc.). The absence of recognition of local reinsurance can result in an increase in risk exposure and higher administrative and re-insurance costs. We propose that concerns about the solvency of the re-insurer should be addressed via the governance and control system, requiring firms to perform an assessment of the provider. *"For all other entities, if they are rated, the rating shall be at least BBB, for unrated they shall demonstrate that they meet at least the*	Noted. See response to comment 5 and revised text Noted. See response to comment 5.

			standard of a BBB rating company." The draft creates undesirable cliff edge changes in recognition should a reinsurer slip below BBB or breach its SCR. Any changes in recognition should be proportionate as is already provided by the counterparty default calculation. Such precipitate regulatory requirements could have unintended consequences. Rating is not defined and we would appreciate clarification that "BBB" corresponds to investment grade financial strength, and it is up to the company to demonstrate that this is satisfied from available sources. The statement "…and if entities are not rated they shall demonstrate that they meet at least the standard of a BBB rated company." Provides the opportunity to use internal ratings, an approach that is supported by the CRO Forum. We strongly suggest to refer also to CPs 28,44 and 51 in deriving the implementing measures for this topic. *"In respect of SPV's these shall meet the requirements of the Level 1 text."* The drafting also creates undesirable cliff edge changes in recognition of SPVs. If an SPV at some point in time fails to fully meet the Level 1 text requirements the allowance moves from 100% to zero overnight. The failure could arise through a breach of the fully funded requirement or through a breach of governance criteria. Any reduction should be proportionate to the anticipated consequences of the breach and remedial actions. For example a fully funded SPV may loose 10% of its fully funded collateral level but CEIOPS text would disallow 100% of the original cover.	

			In the case of governance issues in the SPV we suggest to CEIOPS to introduce an "escalation" process. For example there should be a letter from the supervisor including a precise period for the SPV to provide a response and a deadline to find a solution to repair the breach.	
177.	DIMA (Dublin International Insurance & Management	3.35.	The requirement for the rating of a reinsurer to be at least BBB seems very prudent. Undertakings should receive some credit for using reinsurers with a lower credit rating, having due regard to the counterparty default risk.	Noted. See response to comment 5 and revised text
178.	ECIROA	3.35.	The majority of captive insurance companies do not have a financial rating. As they are subject to Solvency II, captives can demonstrate that they are not in breach of the SCR but due to the nature of captive companies, the requirement to demonstrate that they meet at least the standard of a BBB company is not practical. ECIROA suggests that reinsurance to captives should meet the requirements provided they demonstrate that they meet the SCR and the financial rating of their Parent Company is at least BBB.	Noted. See response to comment 5 and revised text
179.			Confidential comment deleted	
180.	GROUPAMA	3.35.	Although no insurer should be reinsured with a reinsurer rated BBB, it exists and can transiently arrived (before a takeover / buyout by another reinsurer). A reinsurance under BBB shouldn't be totally non-considered.	Noted. See response to comment 5 and revised text
181.	Groupe Consultatif	3.35.	The allowance given to reinsurance risk mitigation provided by entities which are subject to the Level 1 text and are not in breach of the SCR may generate practical issues. Firstly, a timing issue may occur if undertakings cannot integrate the very last update of	Noted. See response to comment 5 and revised text

			the SCR of entities providing reinsurance risk mitigation when calculating their own SCR. Secondly, this approach may increase the volatility in the calculation of the SCR of the undertaking when one or several entities providing reinsurance risk mitigation have a ratio of own funds on SCR fluctuating around 100% from one year to another.	
182.	Institut des Actuaires (France)	3.35.	The allowance given to reinsurance risk mitigation provided by entities which are subject to the Level 1 text and are not in breach of the SCR may generate practical issues. Firstly, a timing issue may occur if undertakings cannot integrate the very last update of the SCR of entities providing reinsurance risk mitigation when calculating their own SCR. Secondly, this approach may increase the volatility in the calculation of the SCR of the undertaking when one or several entities providing reinsurance risk mitigation have a ratio of own funds on SCR fluctuating around 100% from one year to another.	Noted. See response to comment 5 and revised text
183.	International Underwriting Association of London	3.35.	We would question whether it is excessively prudent to require reinsurance to be provided from a BBB rating and above, given that the counterparty default risk module should already have made explicit allowance for the counterparty default risk of such entities should have already been made? We would also question whether being Solvency II regulated, and unrated, would be sufficient to demonstrate the BBB rating.	Noted. See response to comment 5 and revised text
184.	Legal & General Group	3.35.	The rating needs to be expressed in the terms used by each of the ratings agencies – S&P, Moodys, AMBest and Fitch. We would welcome clarification of the term "demonstrate that they meet…" as there are a number of ways in which unregulated entities can gain additional security such as parental guarantees (from rated entities). We are concerned that this paragraph implies (based on reference	Noted. See response to comment 5 and revised text

			to the level 1 directive) restrictions that only EU reinsurers and SPVs can be used to obtain reinsurance risk mitigation. There is a need to recognise that there are legitimate and suitably capitalised reinsurers outside of the EU and a criteria is required in order to determine how they will be judged. Also applies to section 3.56	
185.	Lloyd's	3.35.	This paragraph should be removed. This paragraph is inconsistent with other elements of the implementing measures, especially CP51, where lower rated reinsurers are included and adequately treated. It is also very important to allow for collateral of any reinsurer, regardless of their rating and collateral is adequately included and allowed for in CP51. The paragraph is unnecessarily prescriptive, since risks associated with default are adequately covered elsewhere in the implementing measures.	Noted. See response to comment 5 and revised text
186.	Munich RE	3.35.	Seeing the level 1 text requirement would mean that only EU regulated SPVs would be accepted (as the text only applies to EU domiciled SPVs). Although EU onshore solutions are preferable, flexibility is needed to meet cedents' requirements. E.g. in case a transaction combining EU and non-EU cedents need to find a compromise on the location of the vehicle. In case of SPVs the rating criteria should apply to the collateral only, as this is the unique security in these transactions. We see this paragraph as impractical as a significant reinsurance capacity is provided from Swiss and Bermudian companies. We would appreciate if CEIOPS could follow the precedent set by Germany regarding non-EEA reinsurers. The economic impact should be the driving aspect when it comes to selection of counterparties which provide risk mitigation. The selection should not depend primarily on regulatory factors.	Noted. See response to comment 5 and revised text

187.	Pacific Life Re	3.35.	This paragraph refers to entities which are subject to the Level 1 text ("EU entities") in the first sentence and SPVs in the second sentence. The third sentence refers to "all other entities" and we assume that this means all entities other than EU entities and SPVs. However an alternative reading is that the "all other entities" section is referring to EU entities other than SPVs. We think that the first reading is the more natural interpretation of these words and also the one that gives an appropriate result. However, footnote 6 in paragraph 3.35 regarding "supervision deemed equivalent" (which does not appear in the advice at paragraph 3.56) suggests that this is not the case and that CEIOPS intends that credit should only be given for reinsurance to EU entities. We do not think that something as important as whether credit should be given at all for reinsurance entities from outside the EU ("non-EU entities") should be subject to such ambiguity. If it is intended that no credit should be given for reinsurance to non-EU entities we find this highly surprising at a number of levels. First, it is arbitrary to give credit for a BBB rated EU entity and no credit for a AAA rated non-EU entity. This overstates the importance of regulatory supervision in securing reinsurance recoverables and offends the risk-based and qualitative principles that are at the heart of the Solvency 2 project. Secondly, this approach is likely to have the appearance of being motivated by protectionism and appears to be inconsistent with the public stance that the EU and insurance regulators within the EU have been taking with other regulators in relation to similar rules in their jurisdictions (most notably US rules regarding credit for reinsurance ceded to non-admitted reinsurers).	Noted. See response to comment 5 and revised text

			If reinsurance to non-EU entities which have appropriate financial strength and other characteristics is effectively prohibited in this way, this is likely to have an adverse impact on the availability and cost of reinsurance and a knock on effect on the cost of insurance cover for underlying policyholders. Finally, for firms which are part of international groups this restriction will place unwarranted restrictions on the way in which risk, capital and diversification benefits can be efficiently managed within the group.	
188.	XL Capital Ltd	3.35.	We do not agree with the proposals in this paragraph. Allowance is only given for reinsurance risk mitigation provided by entities which are subject to the Level 1 text and are not in breach of the SCR. The footnote also states that CEIOPS may also consider entities which are subject to supervision deemed equivalent, depending on the outcome of ongoing work in this area. Given that decisions on equivalence are still outstanding the current position is that no risk mitigation could be provided by reinsurance provided by entities outside of the EEA. We find it hard to understand why full recognition for risk mitigation should be allowed where the reinsurer is €1 above its SCR, and withdrawn completely the moment it falls to €1 below its SCR. Likewise we disagree that for all other entities, a rating of at least BBB should be required for recognition of risk mitigation to be allowed. We would prefer to see a mechanism which reflects a smoother transition from full recognition to no recognition. We also request clarification of what CEIOPS mean by “In respect of SPV’s these shall meet the requirements of the Level 1 text.” Does	Noted. See response to comment 5 and revised text

			this mean they must meet all the requirements of the Level 1 text, or that they are deemed to meet the requirements of the Level 1 text? These comments also apply to paragraph 3.56	
189.	ACA – ASSOCIATIO N DES COMPAGNIE S D'ASSURAN CES DU	3.36.	The determination of the credit quality is hazy	Noted
190.	Belgian Coordination Group Solvency II (Assuralia/	3.36.	See 3.35	Noted. See responses regarding 3.35
191.			Confidential comment deleted	
192.	CRO Forum	3.37.	3.34 to 3.37: Details regarding the credit quality of mitigation instruments shall be commented i.r.o. CP 28, 44 and 51.	Noted
193.	CEA, ECO-SLV-09-447	3.38.	The paper sets out five principles for assessing whether the reinsurance mitigation techniques satisfies the criteria for risk transfer. However, the paper does not state to what extent any or all of the principles needs to be satisfied.	Noted
194.	German Insurance Association –	3.38.	The paper sets out five principles for assessing whether the reinsurance mitigation techniques satisfies the criteria for risk transfer. However, the paper does not state to what extent any or all of the principles needs to be satisfied.	Noted

	Gesamtverband der D			
195.	Lloyd's	3.38.	We agree it is important to use a principles-based approach.	Noted
196.	Association of British Insurers	3.39.	We agree to the principle that only effective risk transfer shall create a SCR benefit.	Noted
197.	CEA, ECO-SLV-09-447	3.39.	We agree to the principle that only effective risk transfer shall create a SCR benefit.	Noted
198.	European Union member firms of Deloitte Touche To	3.39.	We agree that the undertaking should show the extent to which an effective transfer of risk is created from the reinsurance arrangement, but we suggest the inclusion of a broad standardised definition to what classifies as an effective risk transfer to ensure consistency on a principle basis.	Noted. CEIOPS considers the definition to be clear.
199.	German Insurance Association – Gesamtverband der D	3.39.	We agree to the principle that only effective risk transfer shall create a SCR benefit. But judging the effectiveness of risk transfer should be based on a fully economic basis.	Noted
200.	Lloyd's	3.39.	We agree.	Noted
201.	Pearl Group Limited	3.39.	We agree to the principle that only effective risk transfer shall create a SCR benefit.	Noted
202.	XL Capital Ltd	3.39.	See comments at paragraph 3.13 above	See response to comments regarding paragraph 3.13
203.	Association	3.40.	See comments to 3.14.	See response to 3.14

	of British Insurers			
204.			Confidential comment deleted	
205.	Belgian Coordination Group Solvency II (Assuralia/	3.40.	See 3.14	Noted see response to comment 3.14
206.	CEA, ECO-SLV-09-447	3.40.	Risk transfer should be allowed if conditions provide unilateral cancellation not only in case of non-payment of moneys. Extraordinary cancellation by one party may still be necessary if it becomes impossible to execute the contract in its original intentions, i.e. in the case of e.g. war, change of ownership/control or similar developments. In practice there are reinsurance treaties which provide for variable cost as sliding excess of loss rates or loss participation, within reasonable limitations. They respect the features of an effective risk transfers as long as the residual risk for the reinsurer remains material. The CEA asks CEIOPS also about how are reinstatements considered in the light of this sub bullet point. We understand that the CEIOPS drafting also covers life treaties where the reinsurer has the ability to review premium rates. Typically this still leaves the cedant with significant risk protection particularly against extreme events. Risk transfer should be allowed in case a reinsurance agreement is combined with a rehabilitation plan for the underlying business (“altering” the risk) which has been agreed upon prior to its conclusion.	Noted. See response to comment 65

			„Rehabilitation plan" is a plan to : odelled: /improve profitability by various means for a portfolio producing negative results. Risk transfer should be allowed in case amounts due to the reinsured undertaking under one treaty are set off against overall obligations between the same parties. Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction. Due to the extended term of alternative risk transfer (3 -5 years), compared to traditional reinsurance (mostly 1 year), "model resets" are often foreseen in the documentation. Meaning that the trigger (and consequently the risk) will be adjusted in the years 2 and following, in case the : odelled risk analysis changes. This may end up in an uplift of the attachment point, but does not reduce the likelihood of a third party loss. It just adapts the risk to a new model to keep constant expected loss level due to new experience. Thus "model resets" need to be excluded from the provision.	
207.	CRO Forum	3.40.	See 3.14	Noted see response to comment 3.14
208.	DIMA (Dublin International Insurance & Management	3.40.	First bullet: The documentation associated with the reinsurance should be required to reflect the economic substance of the transaction. Third bullet: The fact that the transaction contains terms or conditions outside the direct control of the undertaking does not mean there is no risk transfer. In some cases it may not be possible to obtain reinsurance without some of these features (e.g.	Noted. See response to comment 65

			some element of profit-sharing). The undertaking should be allowed take some credit (if not all) for this reinsurance.	
209.	European Union member firms of Deloitte Touche To	3.40.	We agree that for the effective transfer of risk the documentation associated with the reinsurance should reflect the economic substance of the transaction. However, the pragmatic implementation of this statement will be difficult and subjected to subjectivity. A high level specification might be useful to provide guidance. We believe that more emphasis should be put on the last point mentioned regarding the legally effective and enforceable nature as this point is to our opinion the most important to ensure the effective transfer of risk.	Noted. See response to comment 65
210.	German Insurance Association – Gesamtverband der D	3.40.	Risk transfer should be allowed if conditions provide unilateral cancellation not only in case of non-payment of moneys. Extraordinary cancellation by one party may still be necessary if it becomes impossible to execute the contract in its original intentions, i.e. in the case of e.g. war, change of ownership/control or similar developments. In practice there are reinsurance treaties which provide for variable cost as sliding excess of loss rates or loss participation, within reasonable limitations. They respect the features of an effective risk transfers as long as the residual risk for the reinsurer remains material. The GDV asks CEIOPS also about how are reinstatements considered in the light of this sub bullet point. We understand that the CEIOPS drafting also covers life treaties where the reinsurer has the ability to review premium rates. Typically this still leaves the cedant with significant risk protection particularly against extreme events.	Noted. See response to comment 65

			Risk transfer should be allowed in case a reinsurance agreement is combined with a rehabilitation plan for the underlying business ("altering" the risk) which has been agreed upon prior to its conclusion. „Rehabilitation plan" is a plan to : odelled: /improve profitability by various means for a portfolio producing negative results. Risk transfer should be allowed in case amounts due to the reinsured undertaking under one treaty are set off against overall obligations between the same parties. Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction. Due to the extended term of alternative risk transfer (3 -5 years), compared to traditional reinsurance (mostly 1 year), "model resets" are often foreseen in the documentation. Meaning that the trigger (and consequently the risk) will be adjusted in the years 2 and following, in case the : odelled risk analysis changes. This may end up in an uplift of the attachment point, but does not reduce the likelihood of a third party loss. It just adapts the risk to a new model to keep constant expected loss level due to new experience. Thus "model resets" need to be excluded from the provision.	
211.	Just Retirement Limited	3.40.	Third bullet, first sub-bullet: Some existing reinsurance treaties include a clause allowing either party to terminate the contract at will. It would be highly unusual for a reputable reinsurer to cancel a treaty unilaterally; the increased risks associated with distressed reinsurers are covered by the counterparty SCR. Therefore it would be preferable to have regard to the probability of termination, rather than disallowing the mitigating effect simply because the possibility exists.	Noted. See response to comment 65

			Last bullet: Guidance on the meaning of "relevant" jurisdictions would be welcome. For example, the parent companies of the cedant or reinsurer may have a different domicile to their subsidiaries.	
212.	Legal & General Group	3.40.	As per comment for 3.14	Noted. See response to comment 65
213.	Lloyd's	3.40.	We agree with the sentiment of this paragraph but suggest it is reworded in places. The requirement of "beyond dispute" is difficult, if not impossible, to satisfy. Reinsurance disputes do occur (but would not be seen at the outset of the policy) which means this measure would be impossible to meet as a test as no reinsurance policy is beyond dispute. The words "and beyond dispute" should be removed or amended to "and expected to be beyond dispute". Also the paragraph refers to the extent of that transfer. In the SCR calculation the extent of the transfer is a modelled amount and therefore "beyond dispute" is inappropriate wording (no modelled amounts are beyond dispute). Sub-bullet three. We are uncertain as to the situation this is referring to and perhaps an example may help. Sub bullet seven. . It is clearly out of the control of the undertaking for a contract to be enforceable in all jurisdictions. This is an unrealistic expectation. Most reinsurance contracts will cover many jurisdictions and it would be disproportionate to investigate enforceability in all of them. This bullet point should be amended to "determine under which law, court and jurisdiction any disputes are to be resolved".	Noted. See response to comment 65

214.	Solvency II Legal Group	3.40.	First sub-bullet point under third bullet point Comment 1: CEIOPS proposes that, in determining the extent of risk transfer, the (re)insurer should take into account whether the transaction contains any terms which would allow the provider of protection unilaterally to cancel the transaction except for the non-payment of monies due from the (re)insurer. We would propose that the exceptions should be expanded to include the possibility of cancellation because of fraud or misrepresentation by the (re)insurer, or because of a transfer of business to which the protection provider has not consented, unless its consent has been unreasonably withheld. In practice it would often be impossible to remove the right of the protection provider to terminate in these circumstances, though we consider that they can legitimately be regarded as so much within the control of the (re)insurer that they should not be regarded as impacting on whether there has been full risk transfer. Comment 2: We note that there is a difference in approach between CP31-09 and CP52-09 in relation to the ability of the provider to cancel the protection. In CP52-09, the ability of the provider of protection to cancel the protection is taken into account in considering whether there has been effective risk transfer. In CP31-09, the same ability is relevant to whether the protection is direct, explicit, irrevocable and unconditional. It may be that these are different ways of expressing the same principle, but it may be helpful to develop consistency of terminology. Moreover, in CP31-09 (para 3.56 third bullet point), the	Noted. See response to comment 65

			irrevocability of the protection, other than for features within the direct control of the (re)insurer, is expressed as a condition that must be satisfied in order for capital requirements to be reduced at all. We note that making this a condition of there being any reduction in capital requirements, rather than a factor to be taken into account in determining the extent of the reduction, may cause difficulties, particularly in the case of protection by credit derivatives, since under the ISDA Master Agreement (the standard form agreement used for most derivatives transactions), the protection provider would be entitled to terminate the agreement in the event of the protection buyer's insolvency.	
215.	XL Capital Ltd	3.40.	See comments at paragraph 3.14 above	Noted. See response to comment 65
216.	Legal & General Group	3.41.	As per comment for 3.18	Noted. See response to comment for 3.18
217.	CEA, ECO-SLV-09-447	3.42.	The CEA would like to get the definitions of "remote" and "significant variation".	We do not agree. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms
218.	FFSA	3.42.	5. CEIOPS mentions in this paper that a remote probability of a significant variation in the amount or in the timing of payments should not be considered as a factor to exclude the risk mitigation	We do not agree. Noted. CEIOPS supports high level guidance and advice and does not wish to

			effect and therefore the entire contract needs to be considered. 6. FFSA considers that the statement is not clear and it leaves too much for interpretations. We would like to get clarification and specific around the definition of the "remote probability" and "significant variation".	define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms
219.	German Insurance Association – Gesamtverband der D	3.42.	The GDV would like to get the definitions of "remote" and "significant variation".	We do not agree. CEIOPS supports high level guidance and advice and does not wish to define things too precisely. In particular avoid quantitative interpretations of materiality, which we believe is a fairly clear concept in EU terms
220.	Lloyd's	3.42.	We agree.	Noted
221.	ROAM	3.42.	5.	
222.	Groupe Consultatif	3.43.	This is important, since reinsurance is often constructed by a number of contracts and parties. Not always easy to assess the exact transfer of risk, however.	Do not agree. CEIOPS intention is that the matters should only be considered to the extent that they are relevant.
223.	Just Retirement Limited	3.43.	It would be useful to clarify that this clause does not relate to retrocession independently carried out by the reinsurer on its own account.	See response to comment 222
224.	Lloyd's	3.43.	We agree.	Noted
225.	XL Capital Ltd	3.43.	See comments at paragraph 3.16 and 3.17 above	See responses to comment relating to 3.16 and 3.17

226.	Association of British Insurers	3.44.	The existence of basis risk should not “cancel out” the benefit of a mitigation techniques; it should reduce the benefit in proportion of its materiality. We propose that basis risk should be valued and accounted for in the calculation of the economic benefit of a mitigation technique rather than not allowing the risk mitigation technique where basis risk is considered material.	Disagree. There may be a few contracts where we might safely ignore basis risk. However for some instruments where the trigger for recovery is different from the size of the reinsured's loss, then there is the possibility that the instrument will not respond (sufficiently), despite a significant loss for the reinsured from the event. It is also possible that the recovery is greater than expected. For such a contract there is no obvious way to deal with it in the standard SCR. Therefore it is necessary under the standard formula to restrict the level of basis risk allowed. Firms with material basis risk can seek (partial)IM approval.
227.			Confidential comment deleted	
228.	Belgian Coordination Group Solvency II (Assuralia/	3.44.	It would be clear that reinsurance mitigation techniques including basic risks could be recognized as fully effective mitigation techniques, except if the basic risk is really material.	Disagree. See response to comment 226
229.	CEA, ECO-SLV-09-447	3.44.	There is a requirement for the basis risk under a reinsurance mitigation technique not to be material compared to the mitigation effect. We believe that such a requirement is not aligned with an	Disagree. See response to comment 226

			economic view of reinsurance mitigation techniques and we recommend Ceiops to recognize the existence of capital reduction for all cases and not only when basis risk is immaterial. The basic rule, in the spirit of the Directive, is that such techniques should be recognized as effective mitigation techniques. In case they present material basis risk, the undertaking should allow for the reinsurance mitigation technique but also for the basis risk in line with the 99.5% confidence level of the SCR. Further, allowance for basis risk within the SCR is required, but no guidance is given on how this is to be achieved. This could be seen as requiring the use of unapproved internal models and is also inconsistent with the treatment of un-hedged risks in the standard formula SCR (where, for example, differences between actual equity portfolios held and the indices used to derive the equity shock are ignored). The CEA stands ready to cooperate with Ceiops on developing guidance for quantifying "basis risk".	
230.	CRO Forum	3.44.	Risk mitigation techniques should be in general allowed for in the Solvency II calculation on an economic basis. Even if risk mitigation is only partial due to basis risk, it should nevertheless be recognized appropriately. It shall be the obligation of the undertaking to demonstrate the appropriateness of the risk mitigation. *"When a reinsurance risk mitigation technique includes basis risk, there shall be no allowance of the mitigation instrument in the calculation of the SCR unless the undertaking can demonstrate that the basis risk is not material…"*	Disagree. See response to comment 226

			The advice proposes to rule out mitigation techniques where basis risk is considered material. This can lead to two issues; : the undertakings and supervisory authorities would have to discuss and agree on the level of materiality. It is not possible to define materiality ex-ante, as the complexity and on-going development of mitigation techniques make each technique, their assumptions and valuations rather unique. : that complexity – and not materiality – may lead the regulator to rule out mitigation techniques if basis risk exists at all. The existence of basis risk should not "cancel out" the benefit of a mitigation technique; it should reduce the benefit in proportion of its materiality. We propose that basis risk should be valued and accounted for in the calculation of the economic benefit of a mitigation technique rather than not allowing the risk mitigation technique where basis risk is considered material.	
231.	DIMA (Dublin International Insurance & Management	3.44.	This paragraph appears to imply that the reinsurance has to match the original risks of the undertaking almost exactly or no credit at all is given. Reinsurance should simply be required reduce the credit for reinsurance they take in their SCR calculation to reflect any basis risk.	Disagree. See response to comment 226
232.	FFSA	3.44.	As CEIOPS outlines in this paper that when reinsurance risk mitigation technique includes significant basis risk, no allowance should be taken for the mitigating effect. If allowance is made then the calculation of the SCR should take into account the basis risk at 99.5% confidence level. FFSA believes that the rationale for this guidance, the definition of the basis risk and the related indicator to measure its significance	Noted. Noted.

			should be stated. Also, FFSA recommend providing guidance when it comes to reflecting the basis risk in the SCR. FFSA does not understand the economic point to not recognize reinsurance risk mitigation technique including significant basis risk. FFSA believes that it would be more appropriate to suggest a proportionate approach to take into account reinsurance techniques made on the basis of external indicators (Earthquake indicators), rather than the binary approach of the text "yes / no" asking for recognition of this reinsurance technique, a demonstration that the basis risk is insignificant / effects of mitigation FFSA would like CEIOPS to define in detail what kind of basis risk they intend to cover in this clause. As indicated in 3.19, FFSA would also like to kindly urge CEIOPS not to introduce clauses that could discourage the use of effective risk mitigation techniques as it seems to be opposite to the spirit of the Directive. Consequently, FFSA would like this section to be reworded to make it clear that the basic rule is that reinsurance mitigation techniques including basis risks should be recognized as fully effective mitigation techniques, except if the basis risk is really material. In such case, the undertaking shall allow for the reinsurance mitigation technique but shall also allow for the basis risk in line with the 99.5% confidence level of the SCR	Disagree. See response to comment 226 Disagree. See response to comment 226
233.	German Insurance Association – Gesamtverb and der D	3.44.	There is a requirement for the basis risk under a reinsurance mitigation technique not to be material compared to the mitigation effect. We believe that such a requirement is not aligned with an economic view of reinsurance mitigation techniques and we recommend CEIOPS to recognize the existence of capital reduction for all cases and not only when basis risk is immaterial.	Disagree. See response to comment 226

			The basic rule, in the spirit of the Directive, is that such techniques should be recognized as effective mitigation techniques. In case they present material basis risk, the undertaking should allow for the reinsurance mitigation technique but also for the basis risk in line with the 99.5% confidence level of the SCR. Further, allowance for basis risk within the SCR is required, but no guidance is given on how this is to be achieved. This could be seen as requiring the use of unapproved internal models and is also inconsistent with the treatment of un-hedged risks in the standard formula SCR (where, for example, differences between actual equity portfolios held and the indices used to derive the equity shock are ignored).	
234.	Just Retirement Limited	3.44.	It would be preferable to offset basis risk from the mitigation to give an overall reduced mitigating effect, rather than disallow the mitigation as soon as basis risk becomes material.	Disagree. See response to comment 226
235.	Legal & General Group	3.44.	As per comment for 3.19	Disagree. See response to comment 226
236.	Lloyd's	3.44.	The basis risk of certain reinsurance, be it based on indices or as a CAT bond, should not preclude those potential assets from being included in the SCR The current wording suggests that contracts with immaterial basis should be included. We disagree and suggest that such contracts are allowable but only if the basis risk has been adequately allowed for. (i.e. at a 99.5% confidence level) For example, the undertaking may be taking only say 50% of the recovery into account because they are 99.5% certain of that amount of recovery. Is the intention the whole of this recovery is to be excluded? Even if the original basis risk was calculated with99.5% certainty? We would disagree if it was intended to	Disagree. See response to comment 226

			exclude such situations.	
237.	Munich RE	3.44.	*"When a reinsurance risk mitigation technique includes basis risk, there shall be no allowance of the mitigation instrument in the calculation of the SCR unless the undertaking can demonstrate that the basis risk is not material…"* The advice proposes to rule out mitigation techniques where basis risk is considered material. This can lead to two issues; : the undertakings and supervisory authorities would have to discuss and agree on the level of materiality. It is not possible to define materiality ex-ante, as the complexity and on-going development of mitigation techniques make each technique, their assumptions and valuations rather unique. : that complexity – and not materiality – may lead the regulator to rule out mitigation techniques if basis risk exists at all. The existence of basis risk should not "cancel out" the benefit of a mitigation technique; it should <u>reduce</u> the benefit in proportion of its materiality. We propose that basis risk should be valued and accounted for in the calculation of the economic benefit of a mitigation technique rather than not allowing the risk mitigation technique where basis risk is considered material.	Disagree. See response to comment 226
238.	Pearl Group Limited	3.44.	Can the scenario identified here, basis risk in the reinsurance risk mitigation technique, not be allowed for via the use of "haircuts" or the holding of extra capital? Pearl suggests that CEIOPS should expand this paragraph to allow for other appropriate methods to be used.	Disagree. See response to comment 226
239.	ROAM	3.44.	CEIOPS outlines in this paper that when a reinsurance risk mitigation technique includes significant basis risk, no allowance should be made for the mitigating effect. If allowance is made then	Noted.

			the calculation of the SCR should take into account the basis risk at 99.5% confidence level. ROAM believes that the rationale for this guidance, the definition of the basis risk and the related indicator to measure its significance should be stated. Also, ROAM recommends providing guidance when it comes to reflecting the basis risk in the SCR. ROAM does not understand the economic point of not recognizing a reinsurance risk mitigation technique including significant basis risk. ROAM believes that it would be more appropriate to suggest a proportionate approach to take into account reinsurance techniques made on the basis of external indicators (earthquake indicators), rather than the binary approach of the text “yes / no” asking for recognition of this reinsurance technique, a demonstration that the basis risk is insignificant / effects of mitigation ROAM would like CEIOPS to define in detail what kind of basis risk they intend to cover in this clause. As indicated in 3.19, ROAM would also like to kindly urge CEIOPS not to introduce clauses that could discourage the use of effective risk mitigation techniques as it seems to be opposite to the spirit of the Directive. Consequently, ROAM would like this section to be reworded to make it clear that the basic rule is that reinsurance mitigation techniques including basis risks should be recognized as fully effective mitigation techniques, except if the basis risk is really material. In such case, the undertaking shall allow for the reinsurance mitigation technique but shall also allow for the basis risk in line with the 99.5% confidence level of the SCR	Disagree. See response to comment 226 .
240.	XL Capital Ltd	3.44.	See comments at paragraph 3.19 above	See response regarding paragraph 3.19
241.	Association	3.45.	Our understanding is that the capital relief of any reinsurance	Noted

	of British Insurers		arrangement should correspond with the actual economic effects of the risk transfer. The advices are thus a check that the SCR credit for effective risk transfer does not exceed the "true" economic benefit during adverse 1 to 200 year scenarios. Due to the incomplete recognition of the economic benefit of non-proportional transactions under the standard formula an appropriate check of the SCR credit of non-prop transactions under the standard formula is not possible. Workable solutions of an improved assessment of the economic benefit of non prop transactions under the standard formula are thus needed This paragraph also sets out criteria for the ratio of net-to-gross risk, compared to the net-to-gross premiums and best estimate provisions. The risk measure that is referred to is not explained in detail and more guidance is needed. Also, the criteria do not include any particular considerations for the applicability of this to non-proportional or non-standard types of reinsurance, such as what alternative approaches can be taken if the ratios are not appropriate. This paragraph finally refers to the prohibition of allowance for finite reinsurance and other comparable SPV constructions. The reason given is that these arrangements are tailor-made and not standard instruments, therefore not in the remit of the standard formula. However, many reinsurance instruments are tailor made and so more justification is needed for why finite reinsurance is not permitted, or details provided of when an appropriate usage may be allowable. See also comments to 3.22.	Noted Noted see responses to comment 112 Noted. See response to comment 122 See responses to comments from 3.22

242.			Confidential comment deleted	
243.	CEA, ECO-SLV-09-447	3.45.	Our understanding is that the capital relief of any reinsurance arrangement should correspond with the actual economic effects of the risk transfer. The advices are thus a check that the SCR credit for effective risk transfer does not exceed the "true" economic benefit during adverse 1 to 200 year scenarios. Due to the incomplete recognition of the economic benefit of non proportional transactions under the standard formula an appropriate check of the SCR credit of non prop transactions under the standard formula is not possible. Workable solutions of an improved assessment of the economic benefit of non prop transactions under the standard formula are thus needed. This paragraph also sets out criteria for the ratio of net-to-gross risk, compared to the net-to-gross premiums and best estimate provisions. The risk measure that is referred to is not explained in detail and a clear definition is needed. Also, the criteria do not include any particular considerations for the applicability of this to non-proportional or non-standard types of reinsurance, such as what alternative approaches can be taken if the ratios are not appropriate. For example it is common in non-proportional reinsurance, that the ratio of net to gross risk is smaller than the ratio of net to gross premium, i.e. that a significant and fairly stable "bulk business" is not reinsured. The paragraph can be misinterpreted as if reinsurance may only be allowed for if the two ratios are the same. This paragraph finally refers to the prohibition of allowance for finite reinsurance and other comparable SPV constructions. The CEA disagrees with Ceiops statement which excludes so-called finite reinsurance or comparable SPV of the non life premium and reserve sub-module in the standard formula without checking whether such	See response to comment 112 and 122 See response to comment 112 and 122

			structure has true risk transfer features. Any reinsurance technique should be allowed for and considered in calculating the SCR standard formula, at least for its economic value.	
244.	CRO Forum	3.45.	See 3.21 The wording may lead to bad interpretation on recognition of risk transfer for SPV and Finite ("no allowance shall be made for finite reinsurance or comparable SPV constructions of the non life premium and reserve submodule in the standard fomula".	See response to comment 112 and 122
245.	FFSA	3.45.	CEIOPS outlines that, for non-life underwriting risks no allowance should be taken into account for the finite reinsurance or comparable SPV in the standard formula. FFSA disagrees with CEIOPS statement which excludes so-called finite reinsurance or comparable SPV of the non life premium and reserve sub-module in the standard formula without checking whether such structure has true risk transfer features. FFSA believes that effective risk transfer should be examined and that in some cases, it would be found in finite reinsurance. Therefore it should not be excluded without assessing such risk transfer Any reinsurance technique should be allowed and considered in calculating the SCR standard formula, at least for its economic value the mitigation effect provided (see in particular Article 3.23 of the same text).	See response to comment 112 and 122

246.	German Insurance Association – Gesamtverband der D	3.45.	Our understanding is that the capital relief of any reinsurance arrangement should correspond with the actual economic effects of the risk transfer. The advices are thus a check that the SCR credit for effective risk transfer does not exceed the "true" economic benefit during adverse 1 to 200 year scenarios. Due to the incomplete recognition of the economic benefit of non proportional transactions under the standard formula an appropriate check of the SCR credit of non prop transactions under the standard formula is not possible. Workable solutions of an improved assessment of the economic benefit of non prop transactions under the standard formula are thus needed This paragraph also sets out criteria for the ratio of net-to-gross risk, compared to the net-to-gross premiums and best estimate provisions. The risk measure that is referred to is not explained in detail and a clear definition is needed. Also, the criteria do not include any particular considerations for the applicability of this to non-proportional or non-standard types of reinsurance, such as what alternative approaches can be taken if the ratios are not appropriate. For example it is common in non-proportional reinsurance, that the ratio of net to gross risk is smaller than the ratio of net to gross premium, i.e. that a significant and fairly stable "bulk business" is not reinsured. The paragraph can be misinterpreted as if reinsurance may only be allowed for if the two ratios are the same. This paragraph finally refers to the prohibition of allowance for finite reinsurance and other comparable SPV constructions. The GDV disagrees with CEIOPS statement which excludes so-called finite reinsurance or comparable SPV of the non life premium and reserve sub-module in the standard formula without checking whether such structure has true risk transfer features. Any	See response to comment 112 and 122

			reinsurance technique should be allowed for and considered in calculating the SCR standard formula, at least for its economic value.	
247.	Lloyd's	3.45.	This provision is very important. It might be more clearly stated as follows: The ratio of (a) claim provisions at a 99.5% confidence level on a gross of reinsurance basis to (b) claim provisions at a 99.5% confidence level on a net of reinsurance basis is less than (or at least not significantly greater than) the ratio of (c) gross best estimate provisions to (d) net best estimate provisions. And The ratio of (e) forecast claims at a 99.5% confidence level on a gross of reinsurance basis to (f) forecast claims at a 99.5% confidence level on a net of reinsurance basis is less than (or at least not significantly greater than) the ratio of (g) gross best estimate forecast claims to (h) net best estimate forecast claims.	See response to comment 112
248.	Pearl Group Limited	3.45.	Our understanding is that the capital relief of any reinsurance arrangement should correspond with the actual economic effects of the risk transfer. The advices are thus a check that the SCR credit for effective risk transfer does not exceed the "true" economic benefit during adverse 1 to 200 year scenarios.	See response to comment 112 and 122
249.	XL Capital Ltd	3.45.	See comments at paragraph 3.20 and 3.21 above	See responses to comment at paragraph 3.20 and 3.21
250.	Belgian Coordination Group	3.46.	Finite reinsurance or comparable SPV are excluded for the purpose of the calculation of the non life premium and reserve sub-module in the standard formula. In some cases, effective risk transfer could	Noted. See response to comment 122.

	Solvency II (Assuralia/		be examined and so it should not be excluded without assessment of risk transfer.	
251.	European Union member firms of Deloitte Touche To	3.46.	We agree that the economic effect of the reinsurance risk mitigation technique is important especially surrounding the interpretation of the effect. However, we believe that this should be parallel to the legal effect and not more important than the legal effect. The aim of the standard formula is to ensure a supervisory convergence and therefore specifying legal effects (even if it is only on a high level principle basis still leaving details to individual supervisors) will be an important task.	Noted
252.	Lloyd's	3.46.	We agree.	Noted
253.	Association of British Insurers	3.47.	This paragraph indicates that proportionality can be reflected in the risk mitigation allowance, via the "reduction in requirements commensurate with the extent of risk transfer". This proportional treatment is appropriate whereas the proposals in 3.44 are not appropriate.	Noted. 3.44 refers to basis risk in particular. The reasons why CEIOPS has taken that view are explained in response to comment 226.
254.			Confidential comment deleted	
255.	CEA, ECO-SLV-09-447	3.47.	This paragraph indicates that proportionality can be reflected in the risk mitigation allowance, via the "reduction in requirements commensurate with the extent of risk transfer". This seems to be at odds with 3.44 above, where material basis risk is grounds for exclusion of the reinsurance mitigation technique altogether.	Noted see response to comment 253.
256.	German Insurance Association – Gesamtverb and der D	3.47.	This paragraph indicates that proportionality can be reflected in the risk mitigation allowance, via the "reduction in requirements commensurate with the extent of risk transfer". This seems to be at odds with 3.44 above, where material basis risk is grounds for exclusion of the reinsurance mitigation technique altogether.	Noted see response to comment 253.

257.	Lloyd's	3.47.	We agree.	Noted.
258.	Lloyd's	3.48.	We agree.	Noted
259.	Association of British Insurers	3.49.	Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel, which replaces ordinary jurisdiction.	We disagree. See response to comment 138
260.			Confidential comment deleted	
261.	CEA, ECO-SLV-09-447	3.49.	Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction.	We disagree. See response to comment 138
262.	German Insurance Association – Gesamtverband der D	3.49.	Risk transfer should be allowed if, in case of difference, the agreement's legal validity is subject to involving an arbitration panel which replaces ordinary jurisdiction.	We disagree. See response to comment 138
263.	Lloyd's	3.49.	A test of legally enforceability in all relevant jurisdictions is an unrealistic expectation (even with the word "relevant" inserted). Most reinsurance contracts will cover many jurisdictions and it would be disproportionate to investigate enforceability in all of them. This bullet point should be amended to "determine under which law, court and jurisdiction any disputes are to be resolved".	We disagree. See response to comment 138
264.	Association of British Insurers	3.50.	Effectiveness or ongoing enforceability depends on the law of a country and cannot be generalised. Legal frameworks need to be taken into account in order to avoid any conflict here.	Noted. See response to comment 146

265.			Confidential comment deleted	
266.	CEA, ECO-SLV-09-447	3.50.	This states that the mitigation technique will not be recognised unless the effectiveness and enforceability can be verified and the technique is documented. This should be applied proportionately, taking account of the materiality and complexity of the reinsurance arrangement. Also the varying legal frameworks of the countries involved should be considered. There is no guidance on the content or level of documentation that is required.	Noted. See response to comment 146
267.	CRO Forum	3.50.	CEIOPS should clarify regarding additional risk in the case that the effectiveness or ongoing enforceability cannot be verified or the mitigation technique is not documented.	Noted. See response to comment 146
268.	DIMA (Dublin International Insurance & Management	3.50.	Undertakings should be required to limit the benefit they take for reinsurance in the SCR calculation to reflect the fact that the effectiveness or ongoing enforceability cannot be verified. The extent of the limit should take into account the materiality of the reinsurance to the undertaking. For example an undertaking using a large number of reinsurers in a large number of jurisdictions may be required to set a lower write-down on the benefit they take for reinsurance than an undertaking using one reinsurer in one jurisdiction.	Noted. See response to comment 146
269.	FFSA	3.50.	FFSA thinks that it would be better to advise a proportional approach and not the binary approach developed for the documentation and the verification of enforceability to take into account reinsurance techniques in calculating the SCR standard formula	Noted. See response to comment 146
270.	German	3.50.	This states that the mitigation technique will not be recognised	Noted. See response to comment 146

	Insurance Association – Gesamtverb and der D		unless the effectiveness and enforceability can be verified and the technique is documented. This should be applied proportionately, taking account of the materiality and complexity of the reinsurance arrangement. Also the varying legal frameworks of the countries involved should be considered. There is no guidance on the content or level of documentation that is required.	
271.	Solvency II Legal Group	3.50.	For clarity, we think that this paragraph should refer to “legal effectiveness” rather than just “effectiveness”. We have the same view of the corresponding wording in paras 3.45 and 3.46 of CP31-09.	Noted. See response to comment 146
272.	XL Capital Ltd	3.50.	See comments at paragraph 3.29 above	Noted. See response to comment 146
273.	Association of British Insurers	3.51.	We don’t see exactly how this requirement fits with the one-year time horizon of the Directive and we would like to get more background for it. Nevertheless we understand the aim for the SCR standard formula to take also into account renewal or expiry of reinsurance arrangements. Since there are difficulties in practice with the implementation of such features, CEIOPS should define how to allow for such adverse terms. There is also no clarity as to whether the expiry referred to is only expiry within one year.	Noted. We refer to those circumstances when the SCR would increase. See revised text
274.			Confidential comment deleted	
275.	CEA, ECO-SLV-09-447	3.51.	We don’t see exactly how this requirement fits with the one year time horizon of the Directive and we would like to get more background for it. Nevertheless we understand the aim for the SCR standard formula to take also into account renewal or expiry of reinsurance arrangements. Since there are difficulties in practice with the implementation of such features, Ceiops should define how	Noted. See response to comment 273

			to allow for such adverse terms. There is also no clarity as to whether the expiry referred to is only expiry within one year.	
276.	CRO Forum	3.51.	We agree that this paragraph addresses a risk that is so far not taken into account in the Solvency II methodology. However, we would suggest that CEIOPS takes a realistic view, i.e. best estimate assumption, and not a one sided negative one. Our opinion is supported by the fact that the majority of non-life business is renewed annually on January 1.	Noted. See response to comment 273
277.	DIMA (Dublin International Insurance & Management	3.51.	It is not clear how the standard formula would allow for the possibility that reinsurance protection will not be renewed on expiry or will be renewed on adverse terms.	Noted. See response to comment 273
278.	German Insurance Association – Gesamtverb and der D	3.51.	We don't see exactly how this requirement fits with the one year time horizon of the Directive and we would like to get more background for it. Nevertheless we understand the aim for the SCR standard formula to take also into account renewal or expiry of reinsurance arrangements. Since there are difficulties in practice with the implementation of such features, CEIOPS should define how to allow for such adverse terms. There is also no clarity as to whether the expiry referred to is only expiry within one year.	Noted. See response to comment 273
279.	Legal & General Group	3.51.	There are practical issues with the interpretation of this in the market. We would appreciate more guidance that is referenced to actual market practices.	Noted. See response to comment 273
280.	Lloyd's	3.51.	It is unclear how the SCR formula will allow for the non renewal or renewal at increased terms of reinsurance (except reinsurance covering the CAT events). The standard formula uses expected	Noted. See response to comment 273

			premiums (net of reinsurance spend) as a base measure. Purchasing reinsurance on adverse terms (for example higher premium rates) would reduce net premiums and hence reduce the standard formula premium risk. We do not believe this is the intention and so more clarity is needed on this topic.	
281.	XL Capital Ltd	3.51.	See comments at paragraph 3.30 above	Noted. See responses to paragraph 3.30
282.	DIMA (Dublin International Insurance & Management	3.52.	This requirement opens the door to abandoning the requirement to define a reinsurance transaction as it allows for any assembly of risk mitigation techniques subject only to no double counting.	Noted
283.	Lloyd's	3.52.	We agree.	Noted
284.	CRO Forum	3.53.	Where reinsurance risk mitigation techniques reduce risk, the capital requirement should in normal circumstances be lower than if there were no recognition in the SCR of such techniques. This gives some incentive for proper risk management.	Noted
285.	DIMA (Dublin International Insurance & Management	3.53.	Where reinsurance risk mitigation techniques reduce risk, the capital requirement should in normal circumstances be lower than if there were no recognition in the SCR of such techniques. This gives some incentive for proper risk management.	Noted
286.	Lloyd's	3.53.	We agree.	Noted
287.	Association of British Insurers	3.54.	This paragraph is unclear and may not be very realistic.	We disagree. Should the risk mitigation technique increase risk, the effect should be an increased SCR.
288.	CEA,	3.54.	This paragraph is unclear.	See response to comments 287

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289.	DIMA (Dublin International Insurance & Management	3.54.	By requiring capital charges for risk created in the process of risk mitigation we further enhance the ability to use an open architecture approach and thus abandon the requirement to define reinsurance or risk transfer.	See response to comments 287
290.	German Insurance Association – Gesamtverband der D	3.54.	This paragraph is unclear.	See response to comments 287
291.	Lloyd's	3.54.	We agree.	Noted
292.	XL Capital Ltd	3.54.	See comments at paragraph 3.33 above	See response to paragraph 3.33
293.	Lloyd's	3.55.	We agree but this is covered elsewhere in the proposed implementing measures.	Noted
294.	Association of British Insurers	3.56.	Disallowing recognition of risk mitigation on breach of the SCR or for sub-'BBB' rated companies would be very unhelpful. There is no logic to a £1-breach of SCR or a downgrade to below 'BBB' triggering 100% loss of reinsurance recognition. A better approach would be to implement a capital charge, which escalates rapidly for ratings below 'BBB'. The advice in this paragraph suggests that any reinsurance activity with a non-EEA re-insurer, outside the Solvency II regulatory regime will not be considered as risk mitigation. However, a comment in the foot note in para 3.35 suggests that there is an	We disagree. See revised text CEIOPS believes such requirements to be necessary under the standard formula SCR. See response to comment 4.

			exception of equivalent territories which are being considered by CEIOPS. [NOTE: The footnote is only referred to in the white and NOT in the blue text, therefore technically the footnote is not applicable in the advice.] This can be impractical for group operations in non-EEA regions where local reinsurance arrangements would be preferred for several reasons namely; currency risk, commercial relations, regulation, market knowledge, etc. Ruling out the option for local reinsurance can result in an increase in risk exposure and higher administrative and re-insurance costs. CEIOPS should confirm that EU and non-EU mitigations are treated according to substance not location.	
295.			Confidential comment deleted	
296.	Belgian Coordination Group Solvency II (Assuralia/	3.56.	See 3.35	We disagree. See response to 3.35
297.	CEA, ECO-SLV-09-447	3.56.	The restriction to allow only for risk mitigation instruments if they have at least BBB rating is not in line with the Directive as it is in contradiction with the "prudent person" principle (Article 130). Also it is not in-line with the treatment of counterparty default risk as presented in CP51 – the rating of a counterparty is reflected already in a capital charge. The drafting creates undesirable pro-cyclicality, with cliff edge changes in recognition, any changes in recognition should be proportionate to the deficiency. Where a re-insurer or SPV fails to	We disagree. See response to comment 295

			meet the Level 1 text financial requirements, the allowance should be scaled back. For example an SPV may breach the fully funded principle but still be fully funded for 90% of the original cover. For breaches of governance criteria, any reduction should be proportionate to the anticipated consequences of the breach and remedial actions. Since a significant reinsurance capacity is situated outside the EU, Ceiops should confirm that EU and non-EU mitigations are treated according to substance not location.	
298.	CRO Forum	3.56.	*"Allowance is given to reinsurance risk mitigation provided by entities which are subject to the Level 1 text and are not in breach of the SCR. …"* The advice in this paragraph suggests that any reinsurance activity with a non-EEA re-insurer will not be considered as risk mitigation. This seems to ignore the equivalence principle, for reinsurers located in territories whose solvency regime is deemed to be equivalent to the Solvency II regulatory regime, as per Art.170 of the Directive. Although this advice seems consistent with Level 1 measures (Art. 170.2 - Equivalence), this can be impractical for group operations in non-EEA regions where local reinsurance arrangements can be more advantageous (e.g. lower currency risk, local market expertise, etc.). The absence of recognition of local reinsurance can result in an increase in risk exposure and higher administrative and re-insurance costs. We propose that concerns about the solvency of the re-insurer should be addressed via the governance and control system,	We disagree. See response to comment 295

			requiring firms to perform an assessment of the provider. *"For all other entities, if they are rated, the rating shall be at least BBB, for unrated they shall demonstrate that they meet at least the standard of a BBB rating company."* The draft creates undesirable cliff edge changes in recognition should a reinsurer slip below BBB or breach its SCR. Any changes in recognition should be proportionate as is already provided by the counterparty default calculation. Such precipitate regulatory requirements could have unintended consequences. Rating is not defined and we would appreciate clarification that "BBB" corresponds to investment grade financial strength, and it is up to the company to demonstrate that this is satisfied from available sources. The statement "…and if entities are not rated they shall demonstrate that they meet at least the standard of a BBB rated company." provides the opportunity to use internal ratings, an approach that is supported by the CRO Forum. We strongly suggest to refer also to CPs 28,44 and 51 in deriving the implementing measures for this topic. *"In respect of SPV's these shall meet the requirements of the Level 1 text."* The drafting also creates undesirable cliff edge changes in recognition of SPVs. If an SPV at some point in time fails to fully meet the Level 1 text requirements the allowance moves from 100% to zero overnight. The failure could arise through a breach of the fully funded requirement or through a breach of governance criteria. Any reduction should be proportionate to the anticipated consequences of the breach and remedial actions. For example a fully funded SPV may lose 10% of its fully funded collateral level	

			but CEIOPS text would disallow 100% of the original cover. In the case of governance issues in the SPV we suggest to CEIOPS to introduce an "escalation" process. For example there should be a letter from the supervisor including a precise period for the SPV to provide a response and a deadline to find a solution to repair the breach.	
299.	DIMA (Dublin International Insurance & Management	3.56.	The requirement for the rating of a reinsurer to be at least BBB seems very prudent. Undertakings should receive some credit for using reinsures with a lower credit rating, having due regard to the counterparty default risk.	We disagree. See response to comment 295
300.	FFSA	3.56.	CEIOPS outlines that the allowance for risk mitigation should be accepted only for those providers of risk transfer mitigation which are rated more than BBB or equivalent and which are not in breach of the SCR. FFSA wants to ensure that there is no inconsistency between the calculation of the SCR counterparty risk (in CP 51) and this consultation paper. The CP51 requires a calculation of the risk mitigation effect of all counterparties, even those with a rating lower than BBB. If this risk mitigation effect cannot be taken into account, the CEIOPS should, in the CP51, allow that companies do not have to calculate a risk mitigation effect for their counterparties rated lower than BBB. FFSA thinks that although it is uncommon to be reinsured by a reinsurer rated below BBB, it exists and can transiently happen (before a takeover / buyout by another reinsurer). A reinsurer under BBB shouldn't be totally non-considered. FFSA does not understand why no allowance should be made for a reinsurer that is in breach of its SCR as (i) there is quite a large	We disagree. See response to comment 295

			difference between being in breach of its SCR and no longer being able to pay any of its liabilities towards a cedant and (ii) the counterparty risk of such reinsurer would in any case be considered (as per CP51). In addition, such.a treatment would clearly be pro-cyclical.	
301.	German Insurance Association – Gesamtverband der D	3.56.	The restriction to allow only for risk mitigation instruments if they have at least BBB rating is not in line with the Directive as it is in contradiction with the "prudent person" principle (Article 130). Also it is not in-line with the treatment of counterparty default risk as presented in CP51 – the rating of a counterparty is reflected already in a capital charge. The drafting creates undesirable pro-cyclicality, with cliff edge changes in recognition, any changes in recognition should be proportionate to the deficiency. Where a re-insurer or SPV fails to meet the Level 1 text financial requirements, the allowance should be scaled back. For example an SPV may breach the fully funded principle but still be fully funded for 90% of the original cover. For breaches of governance criteria, any reduction should be proportionate to the anticipated consequences of the breach and remedial actions. Since a significant reinsurance capacity is situated outside the EU, CEIOPS should confirm that EU and non-EU mitigations are treated according to substance not location.	We disagree. See response to comment 295
302.	International Underwriting Association of London	3.56.	We note that all reinsurance mitigation must be provided by by a supplier who is at least BBB rated, or at least meet the standard of a BBB rated company. We would question whether this absolute cut-off point amounts to double counting given that such risks should have already been accounted for in the Counterparty Default	We disagree. See response to comment 295

			Risk module. We would also be keen to ensure that the undertaking's demonstration of an unrated reinsurer is not unduly onerous. If one reinsurer is unrated, it could amount many undertakings within Europe having to demonstrate a single reinsurer is equivalent to BBB rated - this seems a quite inefficient approach. We would question whether a look-through approach could be used to a parent entity.	
303.	Just Retirement Limited	3.56.	The implication is that the SCR would increase suddenly if a highly-rated reinsurer were downgraded below BBB, as no mitigating effect would be allowed after the downgrade. It would be preferable to increase the counterparty SCR to allow for the higher probability of default of (and possibly lower recoverable from) the reinsurer. This would avoid "cliff-edge" effects which can contribute to systemic instability (e.g. the loss of AIG's AAA rating was a contributing factor in the credit crisis).	We disagree. See response to comment 295
304.	Legal & General Group	3.56.	As per comment for 3.35 Automatically disallowing risk mitigation on a breach of SCR is draconian. It would be far better for the undertaking and the regulator to discuss the cause of the breach before deciding upon an appropriate action.	We disagree. See response to comment 295
305.	Lloyd's	3.56.	This statement is inconsistent with other elements of the implementing measures, especially CP51, where lower rated reinsurers are included and adequately treated. It is also very important to allow for collateral of any reinsurer, regardless of their rating. Collateral is also adequately included and allowed for in CP51. This paragraph should be removed, as it is unnecessarily prescriptive given the risk associated with default are adequately covered elsewhere in the implementing measures.	We disagree. See response to comment 295 .
306.	Munich RE	3.56.	"Allowance is given to reinsurance risk mitigation provided by entities which are subject to the Level 1 text and are not in breach	Partially agree. See response to comment 295

			of the SCR. …” The advice in this paragraph suggests that any reinsurance activity with a non-EEA re-insurer, outside the Solvency II regulatory regime, will not be considered as risk mitigation. This can be impractical for group operations in non-EEA regions where local reinsurance arrangements would be preferred for several reasons namely; currency risk, commercial relations, regulation, market knowledge, etc. Ruling out the option for local reinsurance can result in an increase in risk exposure and higher administrative and re-insurance costs. We propose that concerns about the solvency of the re-insurer should be addressed via the governance and control system, requiring firms to perform an assessment of the provider. The concept of rating used Undertakings should consider the credit quality of the providers of reinsurance. If they are rated, the rating should be at least BBB; for unrated re-insurers, firms should carry out an assessment of the credit quality of the provider. If ratings move below the investment grade temporarily, the valuation of the mitigation technique should factor-in the probability of default of such provider. Seeing the level 1 text requirement would mean that only EU regulated SPVs would be accepted (as the text only applies to EU domiciled SPVs). Although EU onshore solutions are preferable, flexibility is needed to meet cedents’ requirements. E.g. in case a transaction combining EU and non-EU cedents need to find a compromise on the location of the vehicle. In case of SPVs the rating criteria should apply to the collateral only, as this is the unique security in these transactions. We see this paragraph as impractical as a significant reinsurance	

			capacity is provided from Swiss and Bermudian companies. We would appreciate if CEIOPS could follow the precedent set by Germany regarding non-EEA reinsurers. The economic impact should be the driving aspect when it comes to selection of counterparties which provide risk mitigation. The selection should not depend primarily on regulatory factors.	
307.	Pacific Life Re	3.56.	See comments relating to paragraph 3.35.	Noted. See response to comment regarding paragraph 3.35
308.	Pearl Group Limited	3.56.	This paragraph appears to indicate that reinsurance outside of the EU can't be allowed for. Is this CEIOPS intention? Pearl doesn't agree as we believe that appropriate reinsurance can be found outside the EU and if we choose to use such reinsurance it should be allowed for under Solvency II. The fact that reinsurers have to be of a BBB standard seems unnecessarily prudent. Disallowing recognition of risk mitigation on breach of the SCR or for sub-'BBB' rated companies would be very unhelpful. There is no logic to a £1-breach of SCR or a downgrade to below 'BBB' triggering 100% loss of reinsurance recognition. A better approach would be implement a capital charge, which escalates rapidly for ratings below 'BBB'.	We disagree. See response to comment 295
309.	ROAM	3.56.	CEIOPS outlines that the allowance for risk mitigation should be accepted only for those providers of risk transfer mitigation which are rated more than BBB or equivalent and which are not in breach of the SCR. ROAM wants to ensure that there is no inconsistency between the calculation of the SCR counterparty risk (in CP 51) and this	We disagree. See response to comment 295

			consultation paper. CP51 requires a calculation of the risk mitigation effect of all counterparties, even those with a rating lower than BBB. If this risk mitigation effect cannot be taken into account, than CEIOPS should, in CP51, allow that companies do not have to calculate a risk mitigation effect for their counterparties rated lower than BBB. ROAM thinks that although no insurer should be reinsured with a reinsurer rated BBB, it exists and can transiently occur (before a takeover / buyout by another reinsurer). A reinsurer under BBB shouldn't be totally non-considered.	
310.			Confidential comment deleted	
311.	Solvency II Legal Group	3.56.	We welcome the fact that CEIOPS has recognised that reinsurance protection might be provided by unrated entities. We note that this possibility does not appear to have been recognised in CP31-09 in relation to non-reinsurance protection (see para 3.54 of that consultation paper), which we consider problematic since guarantees are often given by an unrated parent company of the immediate counterparty. However, we are concerned that it may not be clear how a (re)insurer would demonstrate that an unrated company meets the standard of a BBB rated company since, strictly speaking, this would require application of proprietary rating criteria of one particular rating agency. It may be preferable for CEIOPS to identify some more objective criteria, such as the percentage of free assets of the counterparty.	We disagree. See response to comment 295
312.	XL Capital Ltd	3.56.	See comments at paragraph 3.35 above	We disagree. See response to comment 295
313.	European	3.57.	We believe that it should also be stated how frequently the credit	Noted

	Union member firms of Deloitte Touche To		quality should be reassessed of the provider of reinsurance. As the credit quality changes (eg a credit rating downgrade) then the effective risk transfer from the reinsurance risk mitigation will change. Conclusively this will impact the calculation and allowance of this risk mitigation in the calculation of the SCR.	
314.	Lloyd's	3.57.	We agree.	Noted
315.	Lloyd's	3.58.	We agree.	Noted
316.	Solvency II Legal Group	3.58.	We note that there is no discussion of the use of collateral to support reinsurance, though this may be implicit in para 3.58. We note that in CP 31-09 (para 3.60) and CP 56-09 (para 5.260 b. third bullet point), CEIOPS proposed that it should be a condition of eligibility of collateral that the (re)insurer should have the right to liquidate the collateral in a timely manner on the insolvency of a custodian. Notwithstanding recent legislation, the insolvency of a large custodian is likely to be a very complicated and time consuming matter. We consider that it should be sufficient for the (re)insurer to have the right to require replacement of the custodian upon the custodian's rating falling below a certain threshold. This should apply whether the collateral supports reinsurance or non-reinsurance protection. When the Level 2 provisions are drafted it will be necessary to ensure that any requirements in relation to collateral do not require the (re)insurer to have an automatic right to recover the whole of the collateral on the occurrence of the relevant event - recovery should only be required to the extent that an amount is owed to the (re)insurer by the counterparty.	We agree. Advice on collateral can be found in CP31 Noted Noted