Comments Template on Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation		Deadline 31 August 2017 23:59 CET
Name of Company:	**AMICE**	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-17-004@eiopa.europa.eu** **Our IT tool does not allow processing of any other formats.** **The numbering of the reference refers to the sections** of the consultation paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation. Please indicate to which paragraph(s) your comment refers to.	
Reference	**Comment**	
General Comment	AMICE welcomes the opportunity to provide feedback to EIOPA's first consultation on the Review of the Solvency II Standard Formula. Our key messages are the following: **Section 2 - Simplified calculations** • **Non-life lapse risk sub-module** should be computed at the Best Estimate Level. • EIOPA should allow the possibility of including **new simplifications** as they emerge based	

on the further development of methodologies and the experience of the industry with Solvency II.

- The approximation to the Combined Standard Deviation Function should be added to the list of simplifications in the Delegated Regulation.
- The LoB 29 Health insurance capturing the SLT business (*health insurance obligations where the underlying business is pursued on a similar technical basis to that of life insurance, other than those included in LoB 33*) should be split between **medical expense and income protection disability – morbidity risk**.

Section 3 – Reducing Reliance on external credit ratings in the Standard Formula

- We support the AMICE proposal to take market spreads as a risk indicator instead of ECAIs' ratings.
- The criteria listed to allow firms to nominate one ECAI only is very restrictive and would lead to a small subset of firms benefiting from the simplification proposed. Firms should be allowed to nominate one ECAI only provided their profit participation and unit-linked business is not material.

Section 4 – Treatment of guarantees, exposure guaranteed by a third party and exposures to regional government and regional authorities

- Partial guarantees should be recognized in the Market Risk Module.
- RGLAs should follow the categorization of Article 115 CRR. Additionally, Guarantees from RGLAs subject to the Intermediate Treatment should be allowed in the Counterparty Default Risk and the Market Risk Module.
- A definition of Public-sector entity should be provided.
- The formula on the LGD on Mortgage Loans would have to be amended to properly

reflect partial guarantees.

Section 5 – Risk Mitigation Techniques

- Adverse Development Covers should be recognized as a risk mitigation technique with some criteria.

Section 6 – Look-through Related Undertakings

- We welcome EIOPA's advice to extend the look-through approach to investment related undertakings. However, the look-through should be optional under certain circumstances.
- The look-through approach should also be extended at group level.

Section 7 – Undertaking Specific Parameters

- We welcome EIOPA's Proposal on USPs for Stop Loss.
- USPs should be developed for the mass lapse sub-module.
- Article 218 should be corrected as there is a typo.

Section 8 – Loss-Absorbing Capacity of Deferred Taxes

The key principles when computing the LAC_{DT} should be the following:

- **Going-concern**: The Going Concern principle when computing the LAC_{DT} should be properly reflected.
- **Time Horizon**: The recoverability time horizon should not be limited to the time horizon of the strategic plan. The time horizon could be different subject to the fiscal legislation which sets out when tax losses are actually recognised and when the carry forward term starts.
- **Non-risk neutral environment**: Firms should be allowed to assess the probability of future

	profits in a real-world situation. • **Projection financial returns on own funds:** Financial revenues on own funds should be in the projection of future profits. Revenues are used to capitalise the technical provisions which are being discounted on the liability side; deferred taxes are therefore based on the differences between the Solvency and the Accounting Balance Sheet. • **Return to better values of shock variables** can be defined as a reversion of post stress credit spreads to their pre-stress levels.	
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2.3	According to EIOPA, the legislation is considered to be sufficient to limit the administrative burden for insurers. However, insurers have another view; These different perspectives suggest that individual supervisors act differently from what have been indicated by EIOPA. In this context, it would be justified to provide some guidance for supervisors as to how to perform this assessment. **Proportionality Assessment** When assessing Proportionality, a qualitative analysis is the first step. Only if the qualitative assessment is not sufficient a quantitative assessment is needed. Supervisors should therefore act retrospectively as part of the supervisory review process. Simplifications should not be subject to a pre-approval process but its assessment should be subject to the supervisory review process. EIOPA indicates in Paragraph 19 that the number of simplified calculations used is around 1000. Can EIOPA provide more granularity as to which simplifications are the ones used by firms and/or per country? **Exhaustive list**	

	As only simplifications may be used if they are listed in the Delegated Regulation, this is considered to be an exhaustive list. We would urge EIOPA / EC to allow the possibility of including new simplifications as they emerge based on the further development of methodologies and the experience of the industry with Solvency II. The simplifications included in the exhaustive list should not entail any demonstration as they already include a level of prudence. Only for the new simplifications not listed in the Delegated Regulation the evaluation in qualitative and quantitative terms of the error introduced in the simplified calculation as indicated in Article 88 would have to be carry out. **Non-life lapse risk** We would like to remind EIOPA that insurance risks are not monitored on a policy-by-policy basis but rather on a portfolio basis. Simplifications for Non-life lapse risk over homogeneous risk groups (HRG) can be misaligned with the unbundling of insurance contracts. If a policyholder lapses it is assumed that all related insurance covers will lapse. Non-life contracts have different guarantees which are split across different HRG. When the policy lapses the different guarantees lapse as well, those which are profitable and those which are onerous. It is therefore meaningless to compute the Non-Life lapse risk sub-module at homogeneous risk group level. We reiterate the need to apply this shock at the best estimate level. The potential slight underestimation of this approach should be compensated by the high level of calibration of this risk (i.e. 40% shock). **Combined Standard Deviation Function** For premium and reserve risk, the parameter used to approximate the 99,5% quantile is equal to 3 which reflects the 99,5% quantile of a lognormal distribution. This is not consistent with the underlying distribution used to calibrate the standard deviation for premium and reserve risk. The capital requirement for the combined premium risk and reserve risk was computed as follows	

$$\rho(\sigma) = \frac{\exp(N_{0.995} \bullet \sqrt{\log(\sigma^2 + 1)})}{\sqrt{\sigma^2 + 1}} -$$

$N_{0.995}$ = 99.5% quantile of the standard normal distribution

σ = Combined standard deviation for non-life premium and reserve risk

The formula above has been replaced by the following proxy:

$$NL_{pr} = 3 \cdot \sigma \cdot V$$

where

V = Volume measure

σ = Combined standard deviation for non-life premium and reserve risk

The table below shows that the simplification overstates the capital requirements for premium and reserve risk for low standard deviations (from 5% to 13%) whereas it understates the capital requirements for high standard deviations (from 14% to 19%).

Line of Business	**Standard deviation premium risk**	**p(sigma)**	
		Simplification	**Standard calculation**
Medical Expenses	5,0%	15,0%	13,6%
Income Protection	8,5%	25,5%	24,0%
Worker's compensation	8,0%	24,0%	22,5%
Non-proportional health reinsurance	17,0%	51,0%	52,3%

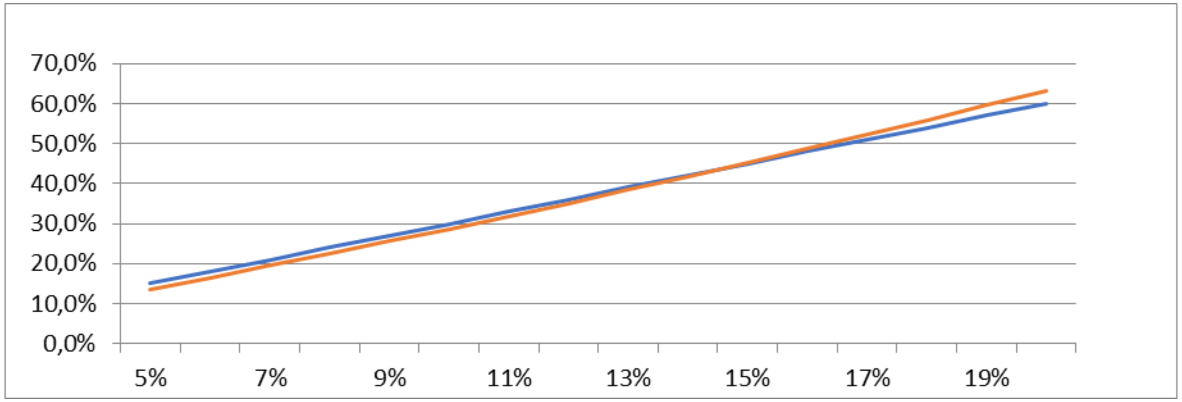
Motor vehicle liability insurance	8 %	24,0%	22,5%
Other motor insurance	8 %	24,0%	22,5%
Marine, aviation and transport insurance	15 %	45,0%	45,2%
Fire and other damage to property insurance	6,4 %	19,2%	17,7%
General liability insurance	14 %	33,6%	32,5%
Credit and suretyship insurance	12 %	36,0%	35,1%
Legal expenses insurance	7 %	21,0%	19,4%
Assistance	9 %	27,0%	25,5%
Miscellaneous financial loss insurance	13 %	39,0%	38,4%
Non-proportional casualty reinsurance	17 %	51,0%	52,3%
Non-proportional marine, aviation and transport reinsurance	17 %	51,0%	52,3%
Non-proportional property reinsurance	17 %	51,0%	52,3%

Line of Business	**Standard deviation reserve risk**	**p(sigma)**	
		Simplification	**Standard calculation**
Medical Expenses	5,0%	15,0%	13,6%
Income Protection	14,0%	42,0%	41,8%

Worker's compensation	11,0%	33,0%	31,8%
Non-proportional health reinsurance	20,0%	60,0%	63,3%
Motor vehicle liability insurance	9,0%	27,0%	25,5%
Other motor insurance	8,0%	24,0%	22,5%
Marine, aviation and transport insurance	11,0%	33,0%	31,8%
Fire and other damage to property insurance	10,0%	30,0%	28,7%
General liability insurance	11,0%	33,0%	31,8%
Credit and suretyship insurance	19,0%	57,0%	59,6%
Legal expenses insurance	12,0%	36,0%	35,1%
Assistance	20,0%	60,0%	63,3%
Miscellaneous financial loss insurance	20,0%	60,0%	63,3%
Non-proportional casualty reinsurance	20,0%	60,0%	63,3%
Non-proportional marine, aviation and transport reinsurance	20,0%	60,0%	63,3%
Non-proportional property reinsurance	20,0%	60,0%	63,3%

Standard deviation	p(sigma)	
	Simplification	**Standard calculation**
5%	15,0%	13,6%
6%	18,0%	16,5%

7%	21,0%	19,4%
8%	24,0%	22,5%
9%	27,0%	25,5%
10%	30,0%	28,7%
11%	33,0%	31,8%
12%	36,0%	35,1%
13%	39,0%	38,4%
14%	**42,0%**	**41,8%**
15%	45,0%	45,2%
16%	48,0%	48,7%
17%	51,0%	52,3%
18%	54,0%	55,9%
19%	57,0%	59,6%



We would propose by default the exact formula and the proxy as a fall-back method.

Additionally, we would like to reiterate the need to **allow a scenario based approach for non-life**

	premium & reserve risk as it would facilitate the application of reinsurance covers and the recognition of the loss absorbing capacity of non-life discretionary benefits.	
2.4	The Article 155 and Article 156 of the Delegated Regulation compute the capital requirement for **medical expense disability – morbidity risk** and **income protection disability – morbidity risk**. The *health disability – morbidity risk sub-module* is computed as the sum of the "*Capital requirement for medical expense disability – morbidity risk*" and the "*Capital requirement for income protection disability – morbidity risk*" with no diversification benefits. However, this distinction is not recognised in the annex for the LoBs. The SLT business does not have different lines of business. The LoB 29 Health insurance captures the SLT business (*health insurance obligations where the underlying business is pursued on a similar technical basis to that of life insurance, other than those included in LoB 33*). Breaking down the lines of business between medical expense and income protection disability – morbidity risk should be envisaged in this context.	
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3.3	In Paragraph 105, EIOPA explains that the more detailed proposal to use spread as a risk indicator instead of ECAI's mapping has been assessed as non-appropriate (in agreement with the view of several stakeholders); "*It may increase pro-cyclicality and incentivize (re)insurance undertakings to focus on the short-term credit risk*".	

	<u>**We draw attention to the fact that the proposal has not been fully understood and we apologize if our description has lacked clarity**</u>. **In the proposal, spreads are not used to calibrate the main item of the spread risk** (i.e the spread risk of the reference portfolio is derived from the same calibration as currently standing in the Delegated Regulation and hence derived from ratings which will save costs and will open the door to the inclusion of other considerations in the calibration; it is to be noted that EIOPA could consider modifying the calibration by inserting other informative elements overtime and even assess the construction of an EIOPA ’own database to be managed and assessed by EIOPA). In the proposal, **spreads are only used to compare the insurer specific portfolio with the reference portfolio**. Where a significant difference exists, an **adjustment factor** to the spread risk calibration factor computed on the reference portfolio is to be applied by the undertaking. The adjustment factor should make up for the difference in risk profile between the firm’s specific portfolio and the reference portfolio and would be derived from the difference on their respective average spreads. A table of adjustment factors according to the differences in spreads would have to be provided by EIOPA and that table of factors could itself mitigate the procyclical element brought by the difference in the portfolios ‘spreads by an appropriate assessment of the correction needed. EIOPA explains that the AMICE proposal may increase pro-cyclicality and incentivize (re) insurance undertakings to focus on the short-term credit risk. We had suggested in our proposal to use the moving average in order to smooth short term effects. In Paragraph 106, EIOPA states that the moving average would disregard new available information but both avoiding pro-cyclicality and considering the most recent information is not possible. Moreover, as EIOPA would be in charge of computing the standard charge for the reference portfolio and the major part of the spread risk charge would be derived from the reference portfolios where spreads are not directly used, the pro-cyclical effect would be very limited. A sharp move in the spreads would be unseen for a company whose portfolio is very close to the reference portfolio provided that no externality has led to any change in the standard charge of the reference portfolio.	

3.4	Paragraph 106 indicates that the moral hazard issue cannot be mitigated by (re)insurance undertakings via their own disclosure; We did not claim that moral hazard is mitigated by undertaking's own disclosure. We did explain that the moral hazard is very limited since companies value their assets in the prudential balance sheet in an appropriate and prudent manner and that any moral hazard behavior would imply an enormous amount of manipulations and transactions in order to produce an effect on spreads. This behaviour could not go unseen without putting the insurance's undertaking under the threat of a massive reputational risk. Paragraph 107 indicates that the use of the reference portfolio raises practical issues; there are several of such portfolios, a portfolio per country and a portfolio per currency; a risk charge with such granularity would increase the complexity of the spread risk computations. Moreover, these portfolios cover only certain types of investments. <u>Currency and Country Reference Portfolios</u> We would like to point out that we did not address the issue of country and currency portfolios. We would suggest EIOPA to disregard the country portfolios and compute the capital charge based on the Euro currency portfolio only, otherwise two companies with exactly the same corporate portfolio could have different capital charges when they operate in different countries. <u>Composition Reference Portfolio</u> The fact that reference portfolios cover only certain types of investments was precisely a key point in our proposal. Complex investments would need a rating and would be subject to an internal assessment process as already indicated in the Delegation Regulation.	
3.4.1		

3.4.2	In Paragraph 147 EIOPA indicates that new guidance will be issued in order to « ascertain » a robust and sound internal credit assessment. Can EIOPA provide more information about the planning delivery of such guidance and how it will be issued?	
3.4.3	We welcome the advice from EIOPA. However, we feel this should not be considered to be a simplification (Article 88) but as a general rule and it should be applicable to all insurers without any restriction. The criteria listed in Paragraph 144 is very restrictive and would lead to a small subset of firms benefiting from the simplification proposed. Firms should be allowed to nominate one ECAI only, provided their profit participation and unit-linked business is not material. We would request EIOPA to delete the third bullet point from the paragraph. EIOPA asked for input on using a **Threshold**. Considering that only exposures which are « plain vanilla » and are eligible under the conditions stated in Paragraph 144 (see above our amendments to Paragraph 144) are allowed, the threshold to be used should be set around 70%.This implies that if a nominated ECAI covers 70% of the total portfolio, the (re) insurance undertaking should not be required to nominate a second ECAI and it should be allowed to calculate the spread risk sub-module and market concentration sub-module as if the assets were of CQS3. We do not agree with the total exemption of loans in this rule. Plain vanilla (rated) loans or loans with appropriate guarantees/collateral should not be exempted.	
4.1		
4.2	In the CRR (575/2013) Article 4 (8) a definition is provided for the public sector in which also government and regional governments are quoted "…*to authorities that exercise the same responsibilities as regional governments and local authorities, or a non-commercial undertaking that is owned by or set up and sponsored by central governments, regional governments or local authorities, and that has explicit guarantee arrangements, and may include self-administered*	

	bodies governed by law that are under public supervision." The Solvency II legislation should use the same definition, especially the latter part of the definition in order to obtain a "level playing field" with banks. Articles 180(3) and Article 187(4) of the Delegated Regulation should be added to the Legal Basis section of EIOPA's advice to cover the new provision allowing the calculation of the spread risk sub-module and concentration risk sub-module for exposures to Member States' RGLA not listed in the ITS as exposures in the form of bonds and loans to non-EEA central government and central banks of CQS2. Article 191 – Mortgage Loans (Counterparty Default Risk Module) and Article 192 – Loss given default (Counterparty Default Risk Module) should also be added.	
4.3		
4.4		
4.4.1	We welcome the advice of EIOPA as mentioned in Paragraph 168 and 169 with respect to the recognition of guarantees and its extension to mortgage loans and real estate.	
4.4.2	**Aligning the RGLAs list in the Commission Implementing Regulation 2015/2011 with the list of the banking framework** In Paragraph 183, EIOPA states the willingness to align the list applied by the banking legislation and Solvency II legislation. In this exercise we would urge EIOPA to engage the industry in this alignment. Table 1 (page 37) indicates that Solvency II recognizes any 'région', 'département' or 'commune'in France as RGLA, however they are not recognised as RGLA in the Banking framework. An alignment of both lists should not lead to the derecognition of some RGLAs already listed in the Implementing Regulation 2015/2011 but should rather cover all RGLAs listed by either the insurance or the banking framework.	

	Intermediate treatment for RGLA With respect to the intermediate treatment, we welcome the proposal made by EIOPA to use CQS 2 for eligible exposures not included in the list. However, RGLAs submitted to the intermediate treatment should be allowed as Guarantees to the counterparty default risk sub-module and the market risk sub-module. **Partial Guarantees are not recognised in the Spread Risk Module** In our opinion, the advice provided by EIOPA in Paragraph 201 is correct and will provide a good reflection of the risk profile for these partially guaranteed mortgage loans. However, we feel that also for other central governments or RGLAs partially guaranteed exposures, not only mortgage loans, the treatment should apply. For example, SME loans are co-financed by governments and other entities. In Paragraph 202 EIOPA exempts the use of partially guarantees in the spread risk module based on the assumption that the credit quality step of a bond or loan will already reflect the risk mitigating effect of the partial guarantee. However, this is not the case for non-rated exposures. In the Delegated Regulation collateral values for non-rated debt are allowed and recognised; partial guarantees from Member State central government and RGLA should therefore be recognised.	
4.4.3	**Public sector entity is not defined** A proper analysis on the need to provide a definition of the "public sector entities" as established by the CRR is missing. When considering government related exposures, a similar treatment should be available for financial institutions regardless of whether they are subject to CRD/CRR or Solvency II. We reiterate that if a government or related exposure is exempted from capital requirements under the one regime it should also be treated similarly within the other regime. In the CRR (575/2013) Article 4 (8) a definition is provided for the public sector in which also	

	government and regional governments are mentioned. "…*to authorities that exercise the same responsibilities as regional governments and local authorities, or a non-commercial undertaking that is owned by or set up and sponsored by central governments, regional governments or local authorities, and that has explicit guarantee arrangements, and may include self-administered bodies governed by law that are under public supervision."* The Solvency II legislation should use the same definition, especially the latter part of the definition in order to obtain a level playing field with the banking sector. When assessing the appropriate risk weighing, the CRD makes a distinction between 1) government exposures, 2) regional governments, 3) other public-sector exposures. This differentiation is not done within Solvency II. A similar categorisation should be done for Solvency II in accordance with the CRD IV. These categories could subsequently reflect the actual risk characteristics of the counterparties and the extent in which these are guaranteed by the government. Article 116 of the CRD IV also uses a distinction in duration of exposures to public institutions. If the exposures are less than three months the risk weighing is reduced to 20%. A similar treatment should be made available for Solvency II. Especially based on the 12 months-time horizon these exposures will be more sensitive to default risk than the volatility of spreads. Therefore, the spread risk module should reflect this. According to Article 116 (4) of the CRD IV "*In exceptional circumstances, exposures to public-sector entities may be treated as exposures to the central government, regional government or local authority in whose jurisdiction they are established where in the opinion of the competent authorities of this jurisdiction there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government, regional government or local authority*." If the competent authorities assume this the case for the one regime it should also be made available for the other regime. Otherwise it would distort the level playing field in possible investment opportunities including the risks associated with the exposures.	

	Furthermore, the CRD IV legislation also provides more categories such as institutions. These are granted a more favourable treatment than normal exposures. EIOPA should apply a same categorisations and treatment when assessing the risk factors under the Standard Formula. Investments by insurers in these type of exposures as mentioned within Article 112 (a)-(f) are typically made to ensure a low risk profile of the exposures. However, the Solvency II legislation does not have a similar categorisation when determining the capital requirements for spread risk (and concentration risk). **Guarantees provided by Central Governments to Natural Catastrophe Reinsurers such as CCR in France should be recognised.**	
4.4.4	The formula on the LGD for mortgage loans is problematic and would have to be amended in order to properly reflect partial guarantees.	
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5.2	EIOPA has performed an analysis for longevity risk transfers but has drawn no conclusion and has therefore not provided any advice.	
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5.4.2	The statement made in Paragraph 301 is not justified. The strategy itself is not necessarily highly risky. For example, if the dynamic strategy is to adjust the portfolio in order to minimise interest rate risk on the whole of the balance sheet, how is this considered to be highly risky? **<u>Minimum duration</u>** EIOPA introduces the requirement for non-traded instruments to have a minimum duration of one month; We question the introduction of a minimum duration. In any case we would like Paragraph 293 to be extended to also cover exposures centrally cleared by an eligible CCP.	

	Rolling Hedges With rolling hedges, it is key to develop a clear legal text with a level of guidance that would allow companies not using hedges on a day-to-day basis to carry out the required actions if needed. Insurers should have a level of understanding that allows the hedging program set in motion (in case the solvency ratio is deteriorating) to be eligible in a way that the risk mitigation on the SCR – capital requirements - can be achieved. **Realistic Recovery Plan** The EIOPA advice regarding the realistic recovery plan and the reduction factor referred to in Paragraph 324 provides flexibility as to the process to be followed by undertakings; however it might also cause pro-cyclicality when there is a breach on the SCR as the re-insurance market is quite widely interconnected within the EU. This might have unexpected consequences on the solvency position of insurers in times of stressed market conditions.	
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6.4	We would like the possibility to extend the look through towards the economic balance sheet of the parent even if it is not considered to be the ultimate parent. This would align the approach used in the accounting balance sheet and for risk management purposes. For example, having a company balance sheet view increases the administrative burden as intragroup loans are recognised on the balance sheet of both entities which could differ in economic value.	
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6.4.2		
6.4.3	We agree with EIOPA's advice but we would like the look through to be also applied when determining the economic balance sheet.	

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7.3	We would like to make a proposal to extend the application of USPs to the **mass lapse risk sub-module**. Computing the mass lapse risk on the total insurance portfolio should be allowed when the firm can prove that a mass lapse event would most likely hit the total portfolio. In any case, there can be product groups where it is likely that 'profitable' policies only will be hit by a mass lapse event. • Companies should be allowed to assess the scenarios behind a possible mass lapse event and whether these are realistic or not. For instance, an operational risk event, a change in national legislation, a change in taxation or a movement in the national market (i.e new insurers entering into the market) could be assessed and the impact to the observed lapse rates be quantified. • The USPs parameters could be the result of a multiplier on the observed lapse rates for each product line or LoBs; this approach can be supported by different distributions on the 99.5% quantile. • The mass lapse would then be the result of the observed lapse rates (based on 5 to 10-year history) corrected by the assumed change in the market (plus or minus, depending on the situation) and multiplied by the Var 99.5% factor (e.g. x2 to x3 depending on the underlying distribution) • This method (i.e observed lapse rate, the expected change and the distribution used) would have to be approved by the competent supervisory authority in each country. • Reference to the mass lapse rates could be obtained from the re-insurance market (i.e what would be the price for a one-year mass lapse for certain policies in certain jurisdictions).	

	We would also like to point out that the capital charge of the mass lapse risk sub-module should be different for policies with and without a surrender value.	
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7.4.3	**Error in Article 218 – Subset of Standard Parameters that may be replaced by undertaking-specific parameters** Last paragraph of Article 218 reads as follows: « *Insurance and reinsurance undertakings shall not replace both the standard parameters referred to in point (a)(ii) and (iii) of the same segment or both the standard parameters referred to in point (c)(ii) and (iii) of the same segment* » • (a)(ii) and (c)(ii) refers to the premium risk gross of reinsurance • (a)(iii) and (a)(iii) refers to non-proportional reinsurance We understand there are some mistakes in the references as it is the standard deviation for non-life premium/ NSLT health premium (i.e <u>net</u> of reinsurance) the ones which cannot be replaced at the same time than the adjustment factor for non-proportional reinsurance. The paragraph should be amended as follows: « *Insurance and reinsurance undertakings shall not replace both the standard parameters referred to in point* ***(a)(i)*** *and (iii) of the same segment or both the standard parameters referred to in point* ***(c)(i)*** *and (iii) of the same segment* » **<u>Annex XVII</u>** Some flexibility should be allowed for in the implementation of the statistical tests (see Annex XVII of the Solvency II Delegated Acts) and in the interpretation of the results both considering the scarcity of data available and also taking into account that some of the assumptions to be tested are very strong and not completely realistic.	

	Evidence of this is provided in Massimo de Felice, Franco Moriconi University of Perugia, October 2016, "On the Estimation of the Undertaking-Specific Parameters and the Related Hypothesis Testing"	
7.4.4		
8.1	When assessing whether EIOPA should provide more advice on possible changes in the Delegated Regulation, the European legislator should explicitly make sure that the advice is aligned with the different local fiscal legislations. As the tax regimes do differ significantly across Member States and also differ across the type of insurance business (i.e differ across LoBs), the requirements should not be too restrictive which could have a very negative effect on the solvency positions and required capital of distinct business lines. In assessing the LAC_{DT} EIOPA should still take into account that the LAC_{DT} is determined on a going concern basis according to Article 101 (2) of Directive 2009/138/EC. This is fundamentally the starting point in the various assessments needed for evidencing the LAC_{DT} outcomes.	
8.2	EIOPA is describing the LAC_{DT} as a « phenomenon ». We would urge EIOPA to rephrase this sentence as the LAC_{DT} is consistent with the fiscal legislation within a Member State which is hardly described as a « phenomenon ». The underlying causes of the LAC_{DT} and their subsequent allocation towards the stressed balance sheet results in additional differences between the fiscal valuation and the economic valuation. This change in the LAC_{DT} can be caused by (1) temporary differences which will recycle back as long as the balance sheet exposure is maintained on the economic balance sheet, (2) the actual losses due to effect of the underlying scenarios (for example defaults or lapses) and (3) results which are mandatory recognised into the period in which they materialise.	

	The various causes will require a different approach in the recoverability assessment based on the going concern assumption. Whether an insurer recognises all three causes depends on the actual fiscal legislation and the treatment of changes in valuation which differ per Member State.	
8.2.1		
8.2.2	Following the assessment of the LAC_{DT} and the current limit on Tier 3 items we believe that this restriction will have an important pro-cyclical impact. Because the underlying scenarios cause a change in valuation on the stressed economic balance sheet, the DTA will mostly increase. Given that the Tier 1 limit is impacted by the LAC_{DT} scenario and the increase of the DTA is restricted in the amount of eligible own funds, more available own funds would not result in more eligible own funds. In this sense, an insurer in breach of the SCR will be required to resort to more recovery measures as a big amount of the change in nDTA can be attributed to temporary valuation differences and this effect is indeed procyclical. As in the business model of insurers assets are matched with liabilities, the temporary part of the nDTA should not be included in the determination of the Tier 3 limit provided the insurer is able to demonstrate that no forced sales will be required. This would decrease the procyclical nature of the restriction in the context of the calculation of the LAC_{DT}.	
8.2.3		
8.2.4	When estimating the differences between the insurance and the banking stress tests, EIOPA should also assess the fact that insurers will have to estimate the economic balance sheet whereas banks will determine their statutory balance sheet mostly based on accounting framework. This results in a different sensitivity towards stresses and scenarios. For example, if an asset is measured at amortised cost the value of the asset is not directly sensible to changes in spreads. No change in nDTA is therefore expected which is the opposite to what happens when an asset is measured on an economic value. This difference has a profound impact on the perspective and need for recognition of nDTA.	
8.3	Article 207 (1) of the Delegated Regulation refers to an instantaneous loss amounting to the sum of the BSCR, LAC_{TP} and Operational Risk. Additionally, Article 207 (5) of the Delegated Regulation requires an allocation towards the stressed economic balance sheet through the risk (basically the underlying scenarios). This implies that the underlying scenarios will have an impact on the Risk	

	Margin (the underlying scenarios of the Underwriting Risk sub-module and the change in the value of the Best Estimate), the Risk-Free Interest Rate (underlying scenario of the Interest Rate Risk sub-module), the Volatility Adjustment (underlying scenario of the Spread Risk sub-module), etc. This is in contradiction with Article 207 (1). Furthermore, when assessing the term « instantaneous » one would assume that the shock occurs at the reference date in order to account for incurring the loss in the own funds. The question that arises is whether the already accumulated tax results are to be included in the recoverability assessment because the year-end result up to the reference point is already recognised after which the shock scenario is applied. Otherwise, the scenario would exceed the 1 in 200. In the EIOPA Guidelines reference is made towards Fiscal Unity (Guideline 9). However, the statements in EIOPA guidelines are not in line with the concept of fiscal unity existing in the various Member States. Under the fiscal unity approach, a group is able to transfer profits (but no losses) to that entity within the fiscal unity in order to optimise the tax payments (to ensure the non-payment or reduced payment of taxes within the fiscal unity). However, EIOPA Guidelines on the Loss Absorbing Capacity of Deferred Taxes do not recognise the concept of fiscal unity which is contrary to the existing fiscal legislation.	
8.4	EIOPA has made an analysis per Day 1 reporting while many supervisors have provided new local guidance on the calculation of the LAC_{DT} which could have an impact on the analysis and outcomes. Furthermore, the economic environment has changed since the Day 1 reporting which would also have an impact on the different outcomes. This should be included in the assessment as the volatility should also be considered when developing more guidance.	
8.4.1	When assessing the tax regimes an overview as to how results are recognised under fiscal legislation would also provide a valuable insight in the development of the nDTA on the economic balance sheets.	
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8.5.3.1		
8.5.3.2	When assessing the horizon, the projection horizon for businesses should at least be similar to the carry forward term allowed by the fiscal legislation. Otherwise unjustified differences would occur between the various regimes reported (fiscal, accounting and Solvency II). Uncertainty on future lapses or renewals could be addressed by sensitivity analysis and the use of lapse assumptions within ALM studies and other publicly available information (changing behaviour of policyholders/consumers). Restricting the horizon is not consistent with the going concern principles defined in the Solvency II Directive 2009/138/EC. Moreover, the valuation practices such as merger & acquisitions or impairment testing (IFRS) use longer time horizons (10 years or longer).	
8.5.3.3	We disagree with the statement that pull-to-par is not consistent with Article 207 (1) of the Delegated Regulation. This article refers to the instantaneous loss incurred whereas the recoverability analysis refers to future periods and behaviour of spreads or other elements. In assessing the pull-to-par effects, the insurer should assess whether the asset is still maintained on the balance sheet for this pull-to-par to materialise.	
8.6		
8.6.1		
8.6.2	When assessing the horizon, the projection horizon for businesses should at least be similar to the carry forward term allowed by the fiscal legislation. Otherwise unjustified differences would occur between the various regimes reported (fiscal, accounting and Solvency II). Uncertainty on future lapses or renewals could be addressed by sensitivity analysis and the use of	

	lapse assumptions within ALM studies and other publically available information (changing behaviour of policyholders/consumers). Restricting the horizon is not consistent with the going concern principles defined in the Solvency II Directive 2009/138/EC. Moreover, the valuation practices such as merger & acquisitions or impairement testing (IFRS) use longer time horizons (10 years or longer).	
8.6.3		
9.1	**Impact Assessment**	
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9.6	EIOPA's Impact Assessment should have included an assessment as to whether • Partial Guarantees should be recognised in the market risk module • A definition of Public Sector Entity could be provided	
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	Comments Template on Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation	Deadline 31 August 2017 23:59 CET
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