

Comments Template on EIOPA-CP-14-053 Consultation Paper on the draft proposal for Implementing Technical Standards on capital add-ons		Deadline 02.Mar.2015 23:59 CET
Company name:	Insurance Europe	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in column "Reference". ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> ○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies. ○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself. <p>Please send the completed template to Consultation_Set2@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-053.</p>		
Reference	Comment	
General Comment	Insurance Europe welcomes the opportunity to comment on the Implementing Technical Standards (ITSs) setting out the procedure to be followed for supervisory authorities when setting, calculating or removing capital add-ons. Insurance Europe appreciates the level of transparency foreseen in the ITS and that the requirements place upon supervisors to provide comprehensive documentation as an accompaniment to any capital add-on request. However, we have the following strong concerns:	

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	<ul style="list-style-type: none"> • The possibility for supervisors to deem a notification unnecessary and impose a capital add-on without further justification as set out in Article 1(3). Under no circumstances can this be justified as undertakings should have the option to retort. • The lack of harmonisation of timeframes for undertakings to respond after the notification of a capital add-on (Articles 1, 3 and 4) which in the context of a group, can lead to inconsistent treatment of comparable undertakings. • As a reminder, the ITS should also clearly state that a capital add-on should be the last supervisory measure as set out in recital 27 and Article 37 of the Directive. <p>Process of appeal at national level</p> <p>Where a process of appeal is currently not established supervisors should consider setting up a board of appeal for undertakings where decisions on capital add-on amounts, notification periods, timeframes, communication, and decisions to change or sustain a capital add-on could be disputed, if agreement between the supervisor and the undertaking has not been reached in the process.</p>	
Recital 1		
Recital 2		
Recital 3		
Article 1 (1)	<p>The title of this Article can be misleading as the notification suggested here is in fact a notification of the intention to impose a capital add-on rather than the communication of the decision to set a capital add-on as set out in Article 4(1). Therefore, we propose the following redrafting of the title: <i>“Notification of the intention to set a capital add-on”</i>. Furthermore, it also applies when determining the date from which the capital add-on shall be applicable as set out in Article 4(2)(c), the supervisory authority should take into account a reasonable time frame for insurance undertakings to be able to comply. Insurance and reinsurance undertakings need enough time to accommodate the decision of the supervisory authority to set a capital add-on, and to proceed with measures to comply.</p> <p>Not necessary to refer to the undertaking “concerned”. Please delete this word as it does not add anything.</p>	

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Article 1 (2)	<p>It is not evident why the specification of a timeframe for the undertaking to respond to a notification of imposing a capital add-on is left for national discretion. The approach is not harmonised if for instance given two comparable undertakings in the context of a group, one supervisor grants one undertaking one week to respond, whereas another supervisor gives two months for the other undertaking. One possibility could be to set a minimum timeframe in the ITS so that the same deficiencies are granted the same consideration by the supervisor but also by the group as a whole.</p> <p>Accordingly, we propose the following redraft: <i>"The supervisory authority shall specify a timeframe, taking into consideration the severity of the deviation concluded, for the insurance or reinsurance undertaking to respond to this notification. However, the timeframe should be no less than 1 month".</i></p>	
Article 1 (3)	<p>We fundamentally disagree with the option for supervisors not to notify the undertaking when imposing a capital add-on. Under no circumstances can this option be justified as it could lead to arbitrary decisions and legal uncertainty without undertakings having the option to respond. This is especially unjustifiable where the setting of a capital add-on would lead to a breach of the SCR. This would have very negative consequences for shareholders and holders of other capital instruments.</p>	
Article 2	<p>The obligation to supply "any relevant information" is excessive and we therefore request to have "any" deleted from the sentence as information requirements should be confined to that information necessary for supervisory authorities to take a decision to set, calculate or remove a capital add-on. As a minimum, the process in terms of documentation requested has to be clearly delineated and linked to the deficiency so that the supervisor is not in a position to have unlimited leeway in its requests.</p>	
Article 3 (1)	<p>In accordance with our redrafting proposal for Article 1(2), the timeframe for the supervisor requesting any information from the insurance or reinsurance undertaking should be adequate and usually not less than 1 month – this should be clearly stated. It should be mentioned explicitly that the supervisory authority shall take into account "the extent and complexity of the requested information, its importance for the decision, the severity of the deficiencies and the urgency of the proceeding of setting a capital add-on" when determining the timeframe.</p>	
Article 3 (2)		

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Article 4 (1)	We understand that this Article deals with the final decision to impose a capital add-on after the notification requirement as set out in Article 1 and having taken the information provided by the undertaking during the set timeframe into account.	
Article 4 (2)	The communication provided by the supervisor should also include the reasons why the arguments of the insurance undertaking were not agreed upon to ensure a maximum level of transparency.	
Article 5		
Article 6 (1)	It is in the interest of the undertaking to have a capital add-on removed as soon as possible. Hence, it is expected that undertakings will update the supervisors on a continuous basis of the progress made and that supervisors manage the progress updates and considerations to remove any capital add-on in <u>a timely manner</u> . The supervisors are expected to remove a capital add-on when it is no longer justified.	
Article 6 (2)		
Article 7	Article 5 sets out that if requested by the national supervisory authority the undertaking should provide progress reports showing the progress made to remedy the deficiency. On the other hand, we expect undertakings to update the national supervisors on a continuous basis on their progress, hence it is not clear what "otherwise" refers to and it should be deleted.	
Article 8 (1)		
Article 8 (2)		
Article 9 (1)		
Article 9 (2)		
Annex I general		
2.1		

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