Comments Template on EIOPA-CP-14-062 Draft proposal for the Advice to the European Commission in response to the Call for Advice on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions		**Deadline 18.Feb.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
	Please follow the instructions for filling in the template: ⇨ Do **not** introduce any change in column "Reference". ⇨ 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 paragraph numbers below. ○ 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. **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).** The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-062.	
Reference	**Comment**	
General Comment	Insurance Europe welcomes the opportunity to comment on the Advice to the EC in response to the call for advice on recovery plan, finance scheme, and supervisory powers in deteriorating financial conditions (hereafter the Advice).	

	Insurance Europe finds it very problematic that a consultation, where the industry would be consulted on the final RTS, is not foreseen by EIOPA. The current version does not meet the standards of an actual legal draft (eg structure of the documents and wording of the text). It is unclear what the actual legal requirements will be as the poor current drafting does not provide for a clear understanding. This gives raise to great concern from the industry as this Call for Advice once adopted will be binding in its entirety. We strongly believe that a more principles based approach is needed rather than a purely rules based approach. From insurance undertakings point of view the rules based approach could force undertakings to take drastic short term measures. This indeed could harm the purpose of undertakings core business objectives which is to provide a long term business proposition for the policyholders. Therefore, we propose that the recovery plan is not only based on quantitative measures but also factors in a fair level of flexibility regarding management actions to cope with market conditions in order to agree on a more realistic recovery plan. It is important that the Advice strikes a balance between a realistic recovery plan/finance scheme and supervisory measures in deteriorating financial conditions. Supervisors should take due care when requesting additional reporting requirements from undertakings, limiting this information to what is deemed relevant considering the exceptional circumstances the undertakings are in. The need for additional information should be assessed on a case-by-case basis and the cost and impact during deteriorating financial conditions of providing additional reporting should be considered.	
Legal background		
Recovery plan and finance scheme: analysis	As this section has no subheadings we have made reference to the individual paragraphs. Hence, paragraph 1 starts with *"EIOPA considers that is necessary…"* and paragraph 2 starts with *"As far as the content is concerned…"* etc. In paragraph 4, the scope for supervisors to ask for both prospective SCR and MCR irrespective of whether the undertaking has to submit a recovery plan or a finance scheme is not acceptable. There is a prospective SCR in the ORSA and when submitting a finance scheme this covers both a	

	prospective SCR and MCR. Hence, the scope should not be extended without providing further details and justification as to why this is necessary. We believe prospective SCR and MCR should always include the impact of the proposed remedial measures and therefore not be asked out of context of the recovery plan or finance scheme. In particular, the information requested for the sake of determine the prospective SCR be aligned with the granularity expected for the annual RSR reporting. Therefore, we propose the following redrafting of the first sentence of this paragraph: "*information on the prospective SCR should be sufficiently reliable and accurate such that the supervisor can take a decision."* Paragraph 5: This should already be covered in the ORSA review and should not be additional information needed. Only when a change in the methods is envisaged an additional information flow is needed. Duplication of information should be avoided especially in these types of circumstances. In paragraph 8: last sentence could be very difficult to achieve in practice as it is very generic. Instead, reference should be made to going concern of the undertaking being re-established. Paragraph 11 (page 7) should be redrafted to better reflect that progress information can be based on the Solvency II reporting package, which is already submitted quarterly. Any additional reporting should only happen under exceptional circumstances (strong supervisory needs) and should be kept flexible in terms of means and content (only ask for what is necessary). Besides the spirit of paragraph 15 in this section should be kept in mind. Paragraph 12 (page 7) gives too much leeway for supervisors to request additional reporting which will be very burdensome (reference to "at least"). Paragraph 17 (page 7): Although 'no material risk of another non-compliance' seems fine for the MCR however, it is too stringent for the SCR. Not only do you need to re-establish the SCR but depending on what 'material risk' means also a rather large buffer. Accordingly, we propose to	

	align the language used in paragraph 17 on page 7 with paragraph (2) on page 10 on approval to be consistent, with the following redrafting: "*For the recovery plan or finance scheme to be taken as realistic, the supervisory authority should consider it unlikely that the insurance or reinsurance undertaking concerned will face another non-compliance within a short timeframe following the end of recovery period"* In paragraph 18 please replace "period" with "plan" in the following sentence on page 8: *"the undertakings can only submit the recovery **plan** and the finance scheme within the submission period…"*	
Content of the recovery plan and finance scheme (1)	Paragraph (1)(e) should be deleted. We agree that undertakings should avoid "quick fixes", which could lead to another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period. However, we believe it does not make sense to require a demonstration that this is not going to happen, for the following reasons: • It is not in line with the Directive and the Delegated Acts. Article 138(3) of the Directive merely asks for a SCR ratio≥100%. The avoidance of another non-compliance within the next three months is the only one required. • Asking "to avoid another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period" without further precision seems to imply the systematic use of an additional capital buffer on top of the SCR. The latter is already supposed to withstand extreme circumstances. Therefore, this approach is too conservative as there is a wide range of other measures which could be more appropriate. Besides, instead of the above, supervisors should ensure that the measures or pressure they impose on the undertaking do not precisely lead them to resort to quick fixes, which will make another non-compliance more likely to happen.	

	EIOPA also requests the submission of additional reporting items as listed in indent a) to f) which seems in excess of what is requested by Article142 of the Directive. The reporting requested should be proportionate, reflect the level and duration of the deterioration of the solvency position and be based on the regular supervisory reporting as set out in Article 35 of the Directive to the largest extent possible. Any requests for additional and more detailed reporting items should be duly justified by the supervisor.	
Content of the recovery plan and finance scheme (2)		
Forecast balance sheet and estimates	It is very onerous and unrealistic that supervisors can request to use QRTs for the forecast balance sheet and estimates especially in times of distress. Besides, indent (c) gives too much leeway to supervisors to request many different forecasts (reference to "at least"). (c) ii) and iii) should also be deleted as article 138(3) of the Directive only asks for an SCR compliance at the *end of the recovery period*. Forecasts for future periods, as mentioned under ii) and iii) are therefore unnecessary. In particular, for (c)(iii) a more high level approach should be envisaged, e.g. the long term capital planning done for the ORSA. Generally speaking, the spirit of paragraph 15 under the "analysis" section, where reference is made to "*…the information is as reliable and complete as can be expected of information that is collated outside the normal reporting cycle*" should be explicitly included in the draft Articles.	
Overall reinsurance policy		
Non-compliance with both the MCR and the SCR at the same time	In the process, it should be considered to ask the undertaking of its preference between submitting a combined recovery plan/finance scheme or separate ones following their respective deadlines.	
Approval of the	Paragraph (2) should be deleted. We agree that undertakings should avoid "quick fixes", which	

recovery plan and finance scheme	could lead to another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period. However, we believe it does not make sense to require a demonstration that this is not going to happen, for the following reasons:
	• It is not in line with the Directive and the Delegated Acts. Article 138(3) of the Directive merely asks for a SCR ratio≥100%. The avoidance of another non-compliance within the next three months is the only one required.
	• Asking "to avoid another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period" without further precision seems to be imposing a stress on a stress scenario, which is too conservative.
	
	Besides, instead of the above, supervisors should ensure that the measures or pressure they impose on the undertaking do not precisely lead them to resort to quick fixes, which will make another non-compliance more likely to happen.
	
	For (3) The submission period is one month from observation of non-compliance with the MCR and two months for the observation of non-compliance with the SCR. It is an unaddressed necessity that the local supervisory authorities have the necessary manpower to analyse and give feedback to the undertaking submitting the recovery plan/finance scheme in due time, especially where the recovery plan/finance scheme cannot be approved the first time. It should be recognised that deadlines for feedback to the undertaking are extremely tight and that the supervisory authority should take every measure to keep the response time as short as at all possible.
	
	For (4) This paragraph sets out how the combined recovery plan and the finance scheme might only be partially approved. However, the paragraph mentions nothing about what happens if the combined recovery plan and the finance scheme are partially rejected, and the deadline for the	

	submission period expires, before the undertaking can re-submit the part of the combined recovery plan and the finance scheme that was initially rejected. The comment for paragraph (3) on the recognition of tight deadlines also applies to this paragraph. There should be references to Article 144 of the Directive which sets out the last supervisory measures to be applied if re-establishment of compliance with the MCR is unrealistic or not attained. Perhaps a paragraph (5) could be added stating: "*Where the undertaking fails to establish compliance with the MCR or the submitted finance scheme is inadequate and unrealistic the supervisory measures in Article 144(1) applies.*"	
Supervisory powers in deteriorating financial conditions: analysis	In this process EIOPA should also consider the dialogue with the insurer concerned on the appropriateness of the measures and whether the measures will not worsen the situation (as mentioned under 5).	
Supervisory powers in deteriorating financial conditions (1)	It should be strongly justified if a supervisor imposes additional reporting requirements and the reporting should only contain numbers that are deemed necessary to assess the progress made, in case of deteriorating financial conditions. There should be an appropriate balance between the reporting requested in the recovery plan/finance scheme and the quality and reliability of the estimates (the shorter the reporting period, the rougher the estimate). The supervisor should, when considering imposing additional measures, take into consideration the undertakings ability to stay in going concern.	
Supervisory powers in deteriorating financial conditions (2)		
Supervisory powers in deteriorating financial conditions (3)		
Supervisory powers		

in deteriorating financial conditions (4)		
Supervisory powers in deteriorating financial conditions (5)		
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