

**Comments Template on the proposal for
implementing technical standards on special purpose vehicles**

**Deadline
30 June 2014
23:59 CET**

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| Name of Company: | The Actuarial Association of Europe (AAE) | |
| Disclosure of comments: | Please indicate if your comments should be treated as confidential: | Public |
| <p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ 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 <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, <u>in Word Format</u>, to CP-14-008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering refers to Consultation Paper on the proposal for implementing technical standards on special purpose vehicles.</p> | | |
| Reference | Comment | |
| General Comment | <p>The directive as revised by Omnibus II provides that a special purpose vehicles authorised before 31 December 2015 shall be subject to the law of the Member State having authorized it.but, any new activity commenced by such a special purpose vehicle after that date shall be subject to paragraphs 1, 2 and 2a.</p> <p>This ITS proposal doesn't mention anything about these 'grandfathering rules'. As the ITS already repeats various parts of the directive and DA it would be helpful if it also referred to this scope provision.</p> | |
| Q1 | | |

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| Q2 | | |
| Recital (1) | | |
| Recital (2) | | |
| Recital (3) | | |
| Recital (4) | | |
| Recital (5) | | |
| Recital (6) | | |
| Recital (7) | | |
| Recital (8) | | |
| Article 1 | | |
| Article 2 | | |
| Article 3 | | |
| Article 4 | 4. (1) allows a 6 month decision period. This is potentially too long. We assume that EIOPA members will take a pragmatic approach, following the development of a case and not waiting to start the 6 month from when the last piece of backing becomes available. Some items are not fixed until very close to market launch. | |
| Article 5 | | |
| Article 6 | <p>Art 6 '<i>... the special purpose vehicle shall immediately inform its supervisory authority... if there is a risk of non-compliance within the following three months</i>': There is a possibility that a newly emerging risk leads to immediate non-compliance. It would be better to refer to '<i>if there is perceived to be a material risk of ..</i>'</p> <p>Art6.3 and Art7.2 can create cliff edge derecognition for the ceding entity even when the SPV is not exhausted but say 25% below fully funded.This risks creating a crisis where one need not</p> | |

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| | exist. | |
| | See above re Art6.3 and Art7.2 . | |
| Article 7 | 7.1(c)should be limited to material breaches. It could also be qualified using 7.2. | |
| Article 8 | | |
| Article 9 | | |
| Article 10 | | |
| Article 11 | | |
| Article 12 | | |
| Article 13 | | |
| Article 14 | | |
| Article 15 | | |
| Article 16 | | |
| Article 17 | | |
| Article 18 | | |
| Article 19 | | |
| Article 20 | | |
| Annex I | <p>It is generally clear that propped documents or arrangements should be submitted. This is essential as many documents can not be finalised until close to taking the proposal to prospective note holders</p> <p>4,5 and 7 use '<i>or will be</i>' whereas 6 uses '<i>or will be expected</i>'. We would use '<i>or are expected</i>' for all of them as future events can not be certain until closed.</p> <p>9 should refer to '<i>policies</i>' not '<i>policy</i>'</p> <p>11b Investor concentration may not be known before offering, Also given that the SPV will hold the investors funds with no further claim on the investors we are not clear why this concentration</p> | |

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| | <p>matters.</p> <p>11b also refers to management share of the capital base. We are not clear whether this refers to the management of the SPV or of the sponsor/ceding entity or its group.</p> <p>11c does consolidation refer to general accounting (IFRS, USGAAP etc) or just to prudential reporting? It would be helpful to reference DA content dealing with when an SPV can be omitted from a consolidated group view.</p> <p>Annex 1.12(b) refers to rating agency reports. While these are currently normal it would be better to allow for cases where such a report is not obtained especially if the Directive and DA do not require one and reliance on rating agencies is to be reduced. Suggest '<i>(b) any rating agency report prior to the issue ...</i>'. </p> | |
| Annex II : SPV.01.01 | | |
| Annex II : SPV.01.02 | | |
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| Annex III : SPV.02.01 | | |
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| Annex 1 : Impact Assessment | | |

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| Baseline | | |
| Policy analysis | | |
| Proportionality considerations | Given the extensive requirements set out in Annex 1 and the varying nature and size of arrangements and their significance to the soundness of the ceding entity a proportionate approach to each case is recommended. | |