EIOPA-BoS-14/140

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Final Report on Public Consultation No. 14/004 on the Implementing Technical Standard (ITS) on procedures for granting supervisory approval of ancillary own-funds

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1. Executive Summary

Reasons for publication

According to Article 15 of Regulation (EU) No 1094/2010 (EIOPA Regulation) EIOPA may develop implementing technical standards by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2) of the EIOPA Regulation.

Before submitting the draft implementing technical standards to the European Commission, EIOPA shall conduct open public consultations and analyse the potential costs and benefits. In addition, EIOPA shall request the opinion of the Insurance and Reinsurance Stakeholder Group (IRSG) referred to in Article 37 of the EIOPA Regulation.

According to Article 92 (3) of Directive 2009/138/EC[1] (Solvency II Directive), on the taking-up and pursuit of the business of Insurance and Reinsurance, in order to ensure uniform conditions of application of Article 90, EIOPA shall develop implementing technical standards on the procedures for granting supervisory approval for the use of ancillary own funds.

As a result of the above, on 2 April 2014 EIOPA launched a public consultation on the draft ITS on the procedures for granting supervisory approval of ancillary own-fund items.
The Consultation Paper is also published on EIOPA's website[2].

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/004) and the full package of the Public Consultation, including:

Annex I: Impact Assessment and cost and benefit analysis.
Annex II: Resolution of comments.
Annex III: Draft Implementing Technical Standard.

[1] OJ L 335, 17.12.2009, p. 1–155
[2] https://eiopa.europa.eu/consultations/consultation-papers/2014-closed-consultations/april-2014/public-consultation-on-the-set-1-of-the-solvency-ii-implementing-technical-standards-its/index.html

Next steps

In accordance with Article 15 of EIOPA Regulation, the draft ITS in Annex III will be submitted to the European Commission for endorsement by October 31, 2014, as requested by Article 86(3) of the Solvency II Directive.

According to Article 15 of the EIOPA Regulation, the European Commission shall forward it to the European Parliament and the Council.

Within 3 months of receipt of the draft ITS, the European Commission shall decide whether to endorse it in part or with amendments, where the Union's interests so require. The European Commission may extend that period by 1 month.

If the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall send it back to EIOPA explaining why it does not intend to endorse it, or, explaining the reasons for its amendments, as the case may be.

Within a period of 6 weeks, EIOPA may amend the ITS on the basis of the European Commission's proposed amendments and resubmit it in the form of a formal opinion to the European Commission. In this case EIOPA must send a copy of its formal opinion to the European Parliament and to the Council.

If on the expiry of the 6 weeks period, EIOPA has not submitted an amended draft ITS, or if it has submitted a draft ITS that is not amended in a way consistent with the European Commission's proposed amendments, the European Commission may adopt the implementing technical standard with the amendments it considers relevant or it may reject it.

Where the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall follow the process as set out in Article 15 of EIOPA Regulation.

2. Feedback Statement

Introduction

EIOPA would like to thank the Insurance and Reinsurance Stakeholder Group (IRSG) and all the participants to the Public Consultation for their comments on the draft ITS. The responses received have provided important guidance to EIOPA in preparing a final version of the ITS for submission to the European Commission. All of the comments made were given careful consideration by EIOPA. A summary of the main comments received and EIOPA's response to them can be found below and a full list of all the comments provided and EIOPA's responses to them can be found in Annex II.

Consistency with the Solvency II Directive and Implementing Measures

A number of stakeholders, including the IRSG, commented that some provisions were not consistent with the Solvency II Directive and Implementing Measures in placing additional requirements on undertakings. In particular the comment was made that the focus of the assessment of the ancillary own-fund item should be on the counterparty's ability to pay.

In response EIOPA would underline that, whilst important, the ability of the counterparty to pay is not the only criterion envisaged in the Solvency II Directive and Implementing Measures. For this reason, EIOPA does not agree that the evidence requested relating to other criteria should be removed.

Nevertheless, EIOPA noted the more general comment and as a result, following the public consultation, analysed all of the provisions in the ITS in order to assess their consistency with the Solvency II Directive and Implementing Measures, as well as with the specific empowerment for the ITS. Due to this analysis, EIOPA has made a number of changes to the ITS including:

- A restructuring of the ITS to be explicitly based on the main criteria in the Solvency II Directive and Implementing Measures. These are the loss-absorbency of the ancillary own-fund item, the status of the counterparties concerned, the recoverability of the funds and information on the outcome of past calls.

- Some redrafting of provisions to ensure that the requirements for supporting evidence either closely match the drafting of, or can be directly linked to, the Solvency II Directive and Implementing Measures requirements. In doing so, a number of terms were removed, including for example the request for an assessment of specific areas of risk and compliance.

- In the case of the provisions relating to the ancillary own-fund item being callable on demand which were previously in Article 5(3), EIOPA intends to move this to the Guidelines on ancillary own funds which were publicly consulted on in June as part of CP 14/036 'Consultation Paper on the

proposal for Guidelines on Solvency II relating to Pillar 1 requirements' (Chapter II A). EIOPA decided that these provisions were not strictly part of the procedure for ancillary own fund approval, but related to the nature of ancillary own funds more generally. EIOPA considered that it was more appropriate, therefore, to address this issue in the Guidelines on ancillary own funds as part of its objective to ensure consistent supervisory practices and the common application of the Solvency II Directive and Implementing Measures. EIOPA intends to publish the Final Report to the consultation on the Guidelines before the end of this year.

Usefulness of the ITS

Some stakeholders, including the IRSG, questioned the usefulness of the ITS in view of the requirements set out in the Solvency II Directive and Implementing Measures, which they considered to already be precise.

EIOPA is mandated to draft the ITS by Article 92(3) of the Solvency II Directive. The mandate is limited to the procedures for supervisory approval of ancillary own-fund items. In the ITS EIOPA elaborates on the process for supervisory approval and the supporting evidence that is needed in order for the criteria for approval to be satisfied. It is essential for EIOPA to specify the supervisory process to be followed, as this is not prescribed by existing legislation.

EIOPA decided to set out the specific documents or analysis to be provided by undertakings as part of the supporting evidence and not, for example, simply to provide a general provision that undertakings should submit evidence to fulfil the criteria in the Solvency II Directive and Implementing Measures. EIOPA believes this supports its intention of promoting consistent and effective supervisory procedures across Member States. It is considered to be a means to ensure that undertakings properly assess the information that is needed as part of their application, and thereby limit the need for supervisory authorities to request further information with the potential for that to delay the approval process. EIOPA also considers it to be beneficial to provide a list in a single document against which supervisory authorities can determine whether the application is complete or not.

Proportionality

Stakeholders, including the IRSG, asserted that the principle of proportionality should be stated in the articles of the ITS concerning the nature of the supporting evidence to be provided.

With regards to ancillary own funds, and in particular the procedure for approval, EIOPA considers that the nature, scale and complexity of the risks is determined by the nature of the ancillary own-fund item rather than the size of the undertaking. Own funds are needed to absorb losses irrespective of the size of the undertaking. Therefore, the supervisory assessment needs to be sufficiently vigorous to verify the loss absorbency of the own-fund items.

Although a specific treatment is not proposed, in view of the importance and relevance of the principle of proportionality in general, EIOPA clarifies in the impact assessment that proportionality is relevant with regard to the complexity of the ancillary own-fund item. Where an item is more complex, it is expected

that this would require more detailed information or analysis to be provided by the undertaking in order to demonstrate that the risks are fully understood.

Time period for approval

Stakeholders, including the IRSG, argued that the time period for approval should be shortened and made various proposals ranging from 2 weeks to 2 months. In making this point, they emphasised that ancillary own-fund items may be required at very short notice in order to manage the expected volatility in the SCR and own funds calculations, and also in order to manage periods of stress or breaches of the SCR.

EIOPA considered different options regarding the time period (see impact assessment) and the need to balance the costs for undertakings arising from an unduly long approval process, with the regulatory costs arising from a very short approval process. EIOPA does not believe that the arguments or proposals provided by stakeholders warrant changing the proposed approach.

EIOPA does not agree that it will be possible to make a decision on an application within two months or less in all cases, due to the potential for some own-fund items to be complex. In order to ensure an appropriate level of policyholder protection, it is important for supervisory authorities to have sufficient time to properly assess each application and decide if all the relevant criteria are met.

EIOPA therefore maintains that the requirements in the ITS adequately reflect the nature of ancillary own funds and how they should be used by undertakings to comply with the SCR. These requirements are that, firstly, the period of time within which the supervisor must decide on an application is reasonable, and secondly that there is an upper limit of 3 months in normal circumstances and 6 months in exceptional circumstances. EIOPA does not believe that it is appropriate or necessary to prescribe separate time periods for when an undertaking is in a stressed situation, or in breach of its SCR. Should an undertaking be in breach of the SCR, the supervisory authority will be alerted to this. In this instance, the supervisory authority will be required to consider what is a reasonable time period for approval, bearing in mind the circumstances of the SCR breach. It is also expected that a close dialogue will need to take place between the undertaking and the supervisory authority.

Based on the Solvency II reporting requirements undertakings should have advanced notice of a deteriorating capital position, which may indicate the need to raise additional own funds. In addition, EIOPA would highlight that undertakings are required to have a medium term capital management plan in which they would need to consider how to maintain appropriate level of own funds over time, as well as their ability to raise capital as needed.

EIOPA would also like to underline that ancillary own funds should not be viewed primarily as a short-term remedy, and applying for the approval of new ancillary own funds will not necessarily be the appropriate solution when an undertaking breaches its SCR. Should the SCR be breached, the undertaking would be expected to consider if they can reduce their risks, and how they could increase their basic own funds, which may include calling on ancillary own-fund items that were approved previously. Ancillary own funds require an approval process because of their contingent nature and the approval process needs to be sufficiently robust to ensure that items can, in practice, be used to absorb losses.

Pre-approval and the approval of ancillary own-fund items before the undertaking has entered into the contractual arrangements

Stakeholders proposed a pre-approval process whereby certain aspects of the ancillary own-fund item could be approved in advance to allow the item to be formally approved more quickly at a later date when it is needed. It was also noted that the requirement for undertakings to have entered into the contractual arrangements for an ancillary own-fund item prior to obtaining supervisory approval, would mean that undertakings would be constrained unnecessarily.

EIOPA does not believe that it is appropriate to introduce regulation covering a pre-approval process. Firstly, as recognised by stakeholders in their comments, it will only be possible for a part of the application, most importantly the status of the counterparties, to be properly assessed at the time at which formal approval is sought. Furthermore, most of the other aspects of the application such as the assessment of the recoverability of the funds and the information on the outcome of past calls would need to be updated at the time of formal application.

Secondly, as outlined above in relation to the time periods for supervisory approval, EIOPA does not agree with the emphasis placed by stakeholders on the need for ancillary own funds to be approved at very short notice.

Regarding the need to enter into the contractual arrangement for the ancillary own-fund item prior to seeking supervisory approval, the drafting of the ITS had followed the provision in the draft Implementing Measures (Article 52(1)(b) AOF 2 in the document 'Annex to the EIOPA consultation on the ITS for Solvency II'). However, this Article in the Implementing Measures has now been amended (Article 62) to state 'the contractual terms of the arrangement that the insurance or reinsurance undertaking has entered into, *or will enter into*, with the counterparties to provide funds'. EIOPA has therefore redrafted the ITS to be consistent with the Implementing Measures now published.

EIOPA recognises that it may not be practicable for an undertaking to formally enter into an arrangement, before knowing if they will obtain supervisory approval for the item to qualify as Solvency II ancillary own funds. Indeed, it may be necessary for the undertaking to amend certain contractual provisions following the assessment by the supervisory authority in order to obtain approval, and this would be more difficult if arrangements had been formally entered into.

However, it is important to state that, where an undertaking applies for supervisory approval before entering into the contractual arrangements, if it receives supervisory approval, the undertaking would need to directly enter into the arrangement in order for the ancillary own funds to be available. Any substantive delay by the undertaking to enter into the arrangement would invalidate the approval by the supervisory authority and require a new application. EIOPA has, therefore, added a provision to Article 7 of the ITS to state that where the supervisory approval has been granted on the condition that the contract is entered into, the undertaking shall, without delay, enter into the contract, on the terms on which the approval was based, and provide a copy of the signed contract to the supervisory authority.

Information on other applications submitted or foreseen

A number of stakeholders did not see the rationale for the requirement to inform supervisory authorities of other applications submitted by the undertaking or currently foreseen and considered it to be potentially burdensome.

This requirement is also included in the ITS on the procedures for the approval of internal models, matching adjustment and undertaking-specific parameters. It reflects the fact that some approval processes are co-dependent. This is perhaps more visible in terms of the potential use of undertaking specific parameters, partial internal models and full internal models to calculate the SCR. However, it is also the case for own funds, for example the request for approval of the classification of an item that is not included in the lists referred to in Article 97(1) of the Solvency II Directive.

EIOPA also considers this to be a straightforward task, as the requirement is to inform the supervisory authority of such applications and not, for example, to submit additional information, or to resubmit information previously submitted for other applications. EIOPA has, therefore, adjusted the wording of the ITS to clarify that what is requested is only a list of other applications.

'Economic substance' and 'prudent and realistic'

Some comments were received, including from the IRSG, on the need to clarify how the terms 'economic substance' and 'prudent and realistic' were to be understood, and their relation to one another.

The term 'prudent and realistic' is used in Article 90(2) of the Solvency II Directive. EIOPA does not consider it to be within the empowerment provision for the ITS to clarify how the terms should be understood.

EIOPA introduces the concept of economic substance in the ITS, but also believes that it is a prevalent regulatory concept and relates also to the notion of 'substance over form'. The term is used to ensure that undertakings reflect how the ancillary own-fund item is designed to absorb losses in practice and not, for example, to simply rely on the item's legal form. To address the stakeholder comments, EIOPA has drafted explanatory text to Article 2 to explain this point.

Check by supervisory authority rather than undertakings

Regarding a number of provisions, for example the requirement for the contractual terms to be unambiguous and clearly defined, and for confirmation that national law in any relevant jurisdiction does not prevent an item being successfully called, several stakeholders, including the IRSG, asserted that it is the responsibility of the supervisory authority rather than the undertaking to perform such checks.

EIOPA believes that undertakings shall be responsible for ensuring that ancillary own-fund items can be relied upon to provide basic own funds if called up. Supervisory authorities are required to review the compliance of undertakings and in certain cases to assess if a specific approval should be granted. However, even with respect to the latter, the responsibility lies in the first instance with the undertaking to present information to the supervisory authority that the criteria for approval are satisfied.

In the particular cases highlighted by stakeholders, it is the core interest and responsibility of the undertaking to check the clarity of the contractual terms of the ancillary own-fund item, and to verify that there are no impediments that would prevent them from being able to call on the item to absorb losses or increase their own funds when needed.

General nature of the participants to the Public Consultation

EIOPA received comments from the Insurance and Reinsurance Stakeholder Group (IRSG) and six responses from other stakeholders to the public consultation. All the comments received have been published on EIOPA's website.

Respondents can be classified into three main categories: European trade, insurance, or actuarial associations; national insurance or actuarial associations, and other parties such as consultants and lawyers.

Respondents expressed a number of concerns regarding the length of time for supervisory approval of ancillary own fund items, which was considered to be too long in particular during periods of stress or to address potential breaches of the Solvency Capital Requirement (SCR). Stakeholders also believed that some of the requirements put to consultation were not consistent with the Solvency II Directive and Implementing Measures and would be unduly burdensome. Respondents also advocated that a "pre-approval" process for ancillary own-fund items before the relevant contractual arrangements had been entered into, would provide for a faster and more efficient process.

IRSG opinion

The IRSG opinion on the draft Implementing Technical Standard (ITS) for approval processes, as well as the particular comments on the draft ITS at hand, can be consulted under the following link:

https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/sgs-opinion-feedback/index.html

Comments on the Impact Assessment

Two comments were received on the impact assessment, including that the requirements to the ITS will generate significant costs to undertaking. As stated in the version of the impact assessment presented during the public consultation, EIOPA believes that the information requested in the ITS is necessary to assess applications for ancillary own funds against the criteria in the Solvency II Directive and Implementing Measures. As such, the ITS are not imposing additional costs to those necessary as a result of the Solvency II Directive and Implementing Measures. EIOPA has not therefore changed its assessment of the costs to undertaking. Nevertheless, some revisions have been made to the impact assessment to reflect changes to, or to further explain, the policy decisions taken.

Annex I: Impact Assessment and cost benefit analysis

Section 1: Procedural issues and consultation of interested parties

According to Article 15 of the EIOPA regulation, EIOPA conducts analysis of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

Consultation with stakeholders

The feedback from the public consultation with stakeholders conducted between the start of April and the end of June 2014 is summarised in *Section 2: Feedback Statement* of the Final Report.

Section 2: Problem definition

The Solvency II Directive provides for the prior approval of ancillary own-fund items by supervisory authorities based on specified criteria which are set out in the Solvency II Directive and Implementing Measures.

In the absence of further regulation in this area, there would be a risk of divergent practices by member states in applying the procedures for supervisory approval. The ITS, therefore, seeks to address this problem by setting out the process for supervisory approval and the information to be provided by undertakings in order for supervisory authorities to assess whether the criteria for approval are met. In sum, it seeks to ensure that clear and transparent procedures for the approval of ancillary own funds are implemented. As the draft ITS is based on the empowerment in the Solvency II Directive, it seeks to cover only the areas of discretions that are available to EIOPA within the empowerment scope.

Baseline

When analysing the impact from proposed policies, the Impact Assessment methodology foresees that a baseline scenario is applied as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered. The aim of the baseline scenario is to explain how the current situation would evolve without additional regulatory intervention.

The baseline is based on the current situation of the market, taking into account the progress towards the implementation of the Solvency II framework achieved at this stage by insurance and reinsurance undertakings and supervisory authorities.

In particular the baseline for this ITS includes:

- The content of Directive 2009/138/EC, as amended by Directive 2014/51/EC;
- The relevant Implementing Measures.

Proportionality

In the approval process of ancillary own funds, the application of the principle of proportionality is linked to the complexity of the ancillary own-fund item for which approval is sought, which will affect the nature of the information that will need to be provided to the supervisory authority.

Section 3: Objective pursued

The objective pursued is to ensure consistent application of the process for prior approval of ancillary own-fund items across Member States.

This objective corresponds to the following specific Solvency II objectives: "Better allocation of capital" and the Solvency II general objective "Enhances policy holder protection".

Section 4: Policy Options

With the intention of meeting the objective set out in the previous section, EIOPA has analysed different policy options including their respective expected positive and negative impact.

For certain aspects of the ITS, EIOPA did not consider that there were any alternative policy options, and no incremental costs result. In particular, this is the case for those provisions in the ITS that follow directly from the requirement for supervisory approval and detailed criteria included in the Solvency II Directive and Implementing Measures. This is the case for all of the requirements in Articles 2, 3, 4, 5, 7 and 8.

On the other hand, some of the requirements in Articles 1 and 6 in relation to: the structure of the application (Article 1); the period of time for the supervisory authority to decide on an application (Article 6); the period of time for the supervisory authority to confirm if the application is complete (Article 6); and the time taken by the undertaking to provide further information requested by the supervisory authority (Article 6), are the result of policy decisions by EIOPA for which various options were considered and their impact analysed.

Therefore, the policy options considered in relation to Articles 1 and 6 and their impact are the focus of this Impact Assessment, including the policy options which have been discarded during the policy development process.

4.1 Policy issue 1: Structure of the application

4.1.1 Policy option 1: To specify the required information to be provided in the application, but allow undertakings freedom regarding how the information is documented.

4.1.2. Policy option 2: To provide a template or pro-forma on which the required information should be submitted.

4.2 Policy issue 2: The period of time to decide on the application

4.2.1 Policy option 1: To provide only a principle that the period of time for a decision shall be reasonable.

4.2.2. Policy option 2: To provide an absolute maximum period of time within which all applications must be decided.

4.2.3. Policy option 3: Within an absolute maximum period of time, to provide a shorter period of time within which applications must be decided, except in exceptional circumstances.

The selection of policy options 2 or 3 leads to further options regarding the length of the periods of time and, in the case of option 3, whether to provide a

definition of when the period of time can be exceeded. These secondary options are addressed below.

4.3 Policy issue 3: The period of time to confirm if the application is complete

4.3.1 Policy option 1: To set a single timescale within which supervisory authorities should confirm if the application is complete.

4.3.2 Policy option 2: To require supervisory authorities to establish and communicate to undertakings the timescales within which they should expect to receive confirmation of whether the application is complete.

4.4 Policy issue 4: Time taken by the undertaking to provide further information requested by the supervisory authority

4.4.1 Policy option 1: The time taken by the undertaking to provide the supervisory authority with further information is not included within the overall time period for a decision on the application (automatic 'stop-the-clock' mechanism).

4.4.2 Policy option 2: When the supervisory authority requests further information the undertaking may request a suspension of the time period for a decision on the application ('stop-the-clock' mechanism only at the request of the undertaking).

Section 5: Analysis of impacts

Analysis of impact for policy issue 1 (see 4.1): Structure of the application

There is a clear need for applications for supervisory approval of ancillary own-fund items to be documented, and to provide full, clear and accurate information, in order to allow supervisory authorities to assess applications against the required criteria.

Regarding option 1, to specify the information required but not the exact format, EIOPA has not identified any costs arising from this option. EIOPA expects the benefit of this approach to be that undertakings are more likely to provide the information necessary to assess the ancillary own-fund item against the required criteria.

Regarding option 2, to provide a template or pro-forma for the submission of the required information, EIOPA has not identified any benefits associated with this option. On the contrary, EIOPA expects that the development and maintenance of templates or pro-forma for the submission of the required information may create resourcing costs for EIOPA. Also, such templates or pro-forma could not reflect the undertaking-specific nature of the ancillary own-fund item.

Nevertheless, based on the experiences of supervisory authorities in assessing applications, EIOPA will review if, contrary to its current expectation, standardised types of ancillary own-fund items arise which would suggest a standard template may be appropriate.

Analysis of impact for policy issue 2 (see 4.2): The period of time to decide on the application

In developing these ITS, EIOPA considered what the timescales for the approval procedure might be. Timescales are needed to ensure proper discipline over the process; these timescales need to ensure that supervisory authorities have sufficient time in which to consider an application, but also to ensure that undertakings receive a response in a timely manner. Both supervisory authorities and undertakings should be clear regarding the timescales and there should be consistency of approach between Member States.

Analysis of impact – Decision 1

Regarding option 1 to provide a principle that the period of time for a decision shall be reasonable, EIOPA considered that this has the benefit that time taken to decide on the application by supervisory authorities ought to reflect the particular circumstances and nature of the application, in particular where agreement of ancillary own-fund items may be desirable within more limited timescales. This option is not considered to impose any additional costs or expectations on supervisory authorities. However, to provide only a principle that the period of time should be reasonable does not provide certainty for undertakings, and therefore may result in additional planning costs.

With respect to the second option to provide an absolute maximum period of time within which applications must be decided, EIOPA expects undertakings to benefit from greater certainty regarding the approval time period. However, given the possibility for particularly complex applications, this option presents several risks depending on the period of time decided up. On the one hand, it risks setting a maximum period of time which is longer than is needed for most applications, thereby creating a risk that decisions take longer than strictly necessary. On the other hand, it risks setting a maximum period of time which is shorter than is needed for supervisory authorities to appropriately assess complex applications. This might in turn lead to one of two costs – the cost of imprudent applications being approved or the cost of prudent applications being rejected.

With respect to the third option, to provide a shorter period of time within which applications must be decided, except in exceptional circumstances, EIOPA identified the following benefits: firstly, this option would provide a high level of certainty to undertakings regarding when the approval process will be completed. Secondly, this option allows supervisory authorities to properly assess complex applications. On the costs side, there may be some loss of certainty for undertakings regarding when an application will be decided upon. However, this can be mitigated by discussions between undertakings and supervisory authorities, and the fact that the period for decision should only be exceeded in exceptional circumstances.

EIOPA concluded that policy option 1 was not appropriate (see comparison and final choice – decision 1 below). This led to some secondary decisions which are discussed below (decision 2 and 3).

Policy options for Decision 2:

A subsequent decision stemming from decision 1 concerned the length of the absolute maximum period of time to decide on an application and the period of time to decide on an application in all but exceptional circumstances. In decision 2 EIOPA considered the merits of one, three and six month periods for approval.

Analysis of impact – Decision 2

Since Articles 112 and 115 of the Solvency II Directive provide that a supervisory authority should decide on the application for approval of an internal model or major change to the internal model within six months of receipt of the complete application, EIOPA considered whether a similar time period would be appropriate for the approval of the ancillary own-fund items.

EIOPA believed a six month timeframe had the benefit of providing sufficient time for supervisory authorities to assess applications, even where there are significant complexities. Nevertheless, EIOPA considered this option to have the following costs bearing in mind the timescale within which the ancillary own-fund item might be required to provide capital. In particular, if an undertaking breaches its SCR it is required to remedy that breach within six months and in some circumstances the agreement of an ancillary own-fund item may be a realistic capital recovery option. Whilst undertakings will normally be able to identify a potential SCR breach before it occurs, and thus begin the application process before the breach, there will be occasions where this does not occur. In such situations the effectiveness of an undertaking's response would be assisted by an ancillary own-fund item approval timescale that is shorter than the SCR recovery period. In addition, there may be occasions where an undertaking wishes to arrange an ancillary own-fund item in order to take advantage of a market opportunity as it arises. The opportunity cost of a six month delay in approval, whilst not quantifiable, is likely to be high.

Regarding the option to introduce a three month time period, this has the benefit that it is within the timescales for recovery from a breach of the SCR. The creation of opportunity costs would also be less likely, compared to the option of a six month time period. A potential cost of this option is that should an application be particularly complex, the supervisory authority may not be able to conclude its assessment within the three month period, such that it would either need to increase its supervisory resources or to make a decision without having concluded a full assessment.

Regarding a much shorter time period for approval, such as a one month time period, EIOPA judged that supervisory authorities are unlikely to be able to properly consider all the matters required by the Implementing Measures in a period of one month, even for relatively simple applications. If an inadequate review is conducted, there is the potential cost that ancillary own-fund items with inappropriate loss-absorbing characteristics are accepted, which would in turn undermine policyholder protection. The only way to address this would be to increase regulatory resources, which would result in significant costs and would need to be justified by the benefits.

From a benefit perspective, as suggested above, undertaking may be able to react more quickly to address unforeseen breaches of their SCR or to take advantage of market opportunities. However, on the other hand, Article 45 of the Solvency II Directive requires undertakings to comply with the capital

requirements on a continuous basis. Undertakings are required to recalculate their Minimum Capital Requirements (MCR) quarterly and their SCR at least annually; more regularly if the risk profile of their business changes significantly from the underlying assumptions in the annual calculation. The data supporting the quarterly MCR calculation, together with knowledge of significant changes in underlying risk assumptions, should provide advanced notice of a deteriorating capital position and the possible need to raise additional own funds. EIOPA, therefore, does not believe that ancillary own-fund items would ordinarily need to be approved within such a short timeframe, which therefore limits the benefits of a one month approval period.

Policy options for Decision 3

Decision 3 concerned the use of the term 'exceptional circumstances'. The choices were to:

a) explicitly define when the time period may be extended;
b) not explicitly define when the period may be extended.

Analysis of impact – Decision 3

The first option to define when the period of time for deciding on the application may be exceeded would have the benefit of providing greater clarity for undertakings and may promote a more consistent approach amongst supervisory authorities. However, such an approach, would risk inappropriately defining the possible circumstances, thereby meaning either that supervisory authorities would not have sufficient time to assess the application, or an undue prolongation of the time period.

Concerning the option to not to define when the three month period may be exceeded, this has the benefit of allowing supervisory authorities to decide on a case by case basis, but on the other hand it leaves some uncertainty for undertakings.

Analysis of impact for policy issue 3 (see 4.3): The period of time for the supervisory authority to confirm if the application is complete

EIOPA considered that it is important for undertakings to know on a timely basis whether their application is complete, so that they are aware of when they can expect to receive a decision on their application. At the same time, EIOPA believed that it is necessary for supervisory authorities to have sufficient time to review the application and decide if the necessary information has been included. As part of this, EIOPA also considered whether supervisory authorities should be required to set a Member State specific timescale within which to confirm the completeness of the application (policy option 2), or whether it was important to provide a consistent approach and to set a limit for the time that supervisory authorities can take to assess the completeness (policy option 1).

The first policy option has the benefit that it will result in a consistent approach across Member States and provides undertakings with certainty that the assessment of completeness will be concluded within a relatively short period of time. This option, however, will result in some costs since it is not consistent with current national law in several Member States. To implement such a

proposal would therefore require these member states to amend those national laws.

Regarding the second policy option, this has the benefit that it will provide certainty to undertakings, but it will not result in a consistent approach across Member States. It is expected to result in lower costs to supervisory authorities, in that they may need to implement processes to notify undertakings if their application is complete, but they are unlikely to need to change their national laws.

Analysis of impact for policy issue 4 (see 4.4): Time taken by the undertaking to provide further information requested by the supervisory authority

Regarding policy option 1; the time taken by the undertaking to provide the supervisory authority with further information is not included within the overall time period for a decision on the application (automatic 'stop-the-clock' mechanism), EIOPA has identified the following benefits:

- This option would establish an automated process which should be clear to all stakeholders involved and would not require additional discussions between undertakings and supervisory authorities.
- This option would ensure that an undertaking has adequate time to address the request from the supervisory authority without jeopardising the approval of the application.

From a cost perspective, for policy option 1, the overall time period for a decision on an application would not be fixed and may ultimately be longer than the time allowed for in the regulation, in particular where a supervisory authority needs to request further information on multiple occasions. A fixed time period would be expected to assist undertakings in their planning, in particular if they submit a number of different applications to supervisory authorities simultaneously.

In relation to policy option 2; when the supervisory authority requests further information the undertaking may request a suspension of the time period for a decision on the application ('stop-the-clock' mechanism only at the request of the undertaking), an expected benefit is that undertakings would have certainty that the maximum amount of time that the supervisory authority will take to decide on their application is fixed, unless the undertaking itself requests a suspension.

From a cost perspective, EIOPA has identified the following costs for policy option 2:

- The likelihood of an undertaking needing to submit subsequent applications is expected to increase under this option. Where an undertaking did not request a suspension of the time period, the supervisory authority may not have sufficient time to review the information and be satisfied that the necessary conditions for approval are met. The undertaking would then have to decide if it wishes to submit a new application.
- Significant additional costs both to undertakings and supervisory authorities from having to submit an additional application where a previous application was rejected. This would entail administrative costs, for example, each application will need to be approved by the administrative, management and supervisory body of the

undertaking, and similarly the decision to reject an application will require approval at a senior level within the supervisory authority. More importantly, the need for the undertaking to wait for up to a further six months, before potentially being able to use the ancillary own-fund item (subject to supervisory approval of the resubmitted application), would present significant opportunity costs to the undertaking.

- As the process would not be automatic, there would need to be additional communication between the supervisory authority and the undertaking, thereby resulting in some minor additional costs to both parties.

Section 6: Comparison of options

4.1 Policy issue 1: Structure of the application

With regard to the option to specify the required information to be provided in the application, EIOPA decided in favour of policy option 1. The application should provide supervisory authorities with all the details and information which Article 62 to Article 65 of the Implementing Measures require them to consider, and therefore it is considered important to specify the types of information needed in the ITS. However, since ancillary own-fund items are likely to be specific to the undertaking concerned, the most efficient and effective manner for undertakings to do so is not considered to be via a template or pro-forma. Option 1 allows the undertaking-specific nature of the ancillary own-fund item to be fully reflected in the application.

4.2 Policy issue 2: The period of time to decide on an application

Comparison and final choice – decision 1:

EIOPA considered the three policy options set out in section 4.2 above, and concluded on a combination of options 1 and 3.

Regarding the principle of a reasonable period of time (policy option 1), EIOPA concluded that this in itself did not deliver clarity since different stakeholders may have different views of what was reasonable. However, EIOPA decided that it is important to include the principle of reasonableness such that the supervisory authority will need to consider the nature of the application and particular circumstances of the undertaking in relation to the timeliness of its decision.

EIOPA judged option 3 to be appropriate since the matters which will have to be considered by the supervisory authority are likely to be similar, based on the detailed and common criteria in Article 62 to Article 65 of the Implementing Measures. This means that applications may be sufficiently homogeneous to be able to define an upper time limit which is appropriate in many cases (policy option 2). However, EIOPA also concluded that it is likely there would be complex applications, which fell outside the norm. A particular example of such an outlier is an application for approval of an ancillary own-fund item which, on call, delivered an item not included on the list in Article 74 of the Implementing Measures. In such a situation, an appropriate timescale for approving an application in normal circumstances may not apply.

Comparison and final choice – decision 2:

EIOPA concluded that an appropriate approval period of time was generally greater than one month but less than six months. It judged that, other than in exceptional circumstances, supervisory authorities should make a decision within three months of receiving a complete application. This three month time period is considered to balance the costs and benefits of the other two options. EIOPA also concluded that in exceptional circumstances the assessment period shall still not take longer than six months, a time period that is the absolute limit for other approval processes, for example in respect of internal models.

Regarding a one month approval period, in view of the Solvency II governance requirements for an undertaking to review and manage both their short and medium term capital position, undertakings should rarely need to raise capital so quickly. Moreover, there is a risk to policyholder protection from inadequately performed approval procedures if timescales are too short. EIOPA does not believe that a one month period would be either an efficient use of regulatory resource, or an effective way of meeting the overall policy objective of policyholder protection.

With respect to the option to propose a six month period, unless the application is very complex, this was considered to be too long to support other aspects of the Solvency II regime, in particular the six months timescale to address any breach of the SCR. Also, there are likely to be high opportunity costs for undertakings if they need to wait for six months in all cases before being able to react to market opportunities by raising ancillary own-funds. In view of this, EIOPA concluded that a maximum period of six months should only be used in exceptional circumstances.

Comparison and final choice – decision 3:

EIOPA concluded that, since ancillary own-fund items are a new form of regulatory own funds for many types of undertaking, it cannot currently be more definitive about what 'exceptional circumstances' might be. It therefore does not propose to define the term at present. EIOPA considered that the costs to undertakings and supervisory authorities of defining "exceptional" in an inappropriate manner could be high whilst benefits are not proven.

4.3 Policy issue 3: Time period for supervisory authority to confirm if the application is complete

Whilst there may be greater costs to Member States, it is important to provide certainty to undertakings and a convergent approach amongst supervisory authorities, therefore policy option 1 is the preferred approach.

EIOPA considered whether undertakings may be more concerned to know the timeframe adopted by their national supervisory authority for confirming the completeness of the application, rather than whether another Member State supervisory authority undertook to confirm completeness in a more, or less, timely manner than in their Member State. However, EIOPA believed that it is important to provide a consistent approach amongst Member States and ensure that the assessment of completeness is concluded within a relatively short period of time. EIOPA concluded that this time period should not be longer than the 30 days provided to supervisory authorities to review the completeness of other

applications for approval, for example for the use of an internal model or undertaking-specific parameters. Within this time period, Member States could still decide to confirm the completeness of the application within a shorter Member State specific timescale.

4.3 Policy issue 4: Time taken by the undertaking to provide further information requested by the supervisory authority

EIOPA concluded that policy option 1 was the preferred option; the days between a request by a supervisory authority for further and receipt of such information is not included within the overall time period for the application.

EIOPA considered option 1 to be a practical and workable approach which balances the need for undertakings to have certainty, with the costs associated with the rejection of an application. It was felt that the potential costs of an undertaking having to submit a new application for approval were greater than the costs associated with the fact that the time period for a supervisory authority to decide on an application may be extended. It was also noted that it should be possible for undertakings to manage the uncertainty arising from the possible revisions to the time period. Upon receiving the request from the supervisory authority, the undertaking would know that it needs to adjust its planning based on the nature of the request from the supervisory authority. Furthermore, this approach would only add marginally to the uncertainty that the undertaking will need to manage owing to the fact that the application may not be approved. EIOPA also believes that an automated process is preferable, since it would not require additional communication between undertakings and supervisory authorities, as to whether the undertaking intends to suspend the time period.

The safeguard to any unjustified delay to the assessment period would be that a request for further information by the supervisory authority has to be necessary for the assessment of the application, to specify the additional information required and the rationale for the request. It should be clear that the supervisory authority would not be in a position to approve the application without the information.

The suspension of the time period would allow the supervisory authority to have the appropriate time to analyse the information once it has been received; the time taken by the undertaking to submit the information should not impinge on the time for approval.

EIOPA considered whether there was a sufficient incentive for undertakings to either provide the information immediately or, where this is not possible, to request a suspension of the time period. EIOPA felt that, whilst in general this incentive would be sufficient, there would be instances where de facto the information is not provided on a timely basis. This could mean that the supervisory authority would not have time to assess the information and would need to reject the application.

EIOPA will monitor the application by supervisory authorities of the possibility to suspend the time period.

Overall conclusion

The chosen option regarding the structure of the application (Article 1) provides benefit whilst generating no costs above the baseline. Of the decisions relating to Article 6 such as the time periods for supervisory authorities to assess the

application, all provide benefit and should result in only limited additional costs. The benefits flowing from each of these decisions are permanent and will recur each time an undertaking applies to a supervisory authority for approval of an ancillary own-fund item. Policyholders are always better-off under the chosen options.

Whilst Articles 2, 3, 4, 5, 7 and 8 all set out processes to be used to deliver or support supervisory approval, they neither add requirements nor costs over and above the Solvency II Directive requirement for such approval. However, by enhancing clarity, they improve the understanding and effectiveness of the procedure and thus add benefit.

Section 7: Monitoring and evaluation

The following indicators may be relevant in assessing whether the ITS has been effective and efficient in respect of the objective specified in section 3 above.

Objective	Indicator
To ensure consistent application of the process for prior approval of ancillary own-fund items across Member States.	Possible indicators of progress towards meeting the objective may be: • Length of time taken by supervisory authorities to determine that an application is complete and number of applications considered not complete with respect to the number of applications submitted. • Number of applications approved and rejected with respect to the number of applications submitted. • Number of applications where additional information was requested by the supervisory authority and time for decision was suspended.

Annex II: Resolution of comments

Summary of Comments on Consultation Paper CP-14-004-ITS on the procedures for granting supervisory approval of ancillary own-fund items				
EIOPA would like to thank Insurance and Reinsurance Stakeholder Group, Association of Mutual Insurers and Insurance Cooperatives in Europe, CFO Forum and CRO Forum, Federation of European Accountants, Financial Supervisory Authority of Romania, Insurance Europe, and International Underwriting Association of London. The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/004)				
No.	**Name**	**Reference**	**Comment**	**Resolution**
1.	IRSG	General Comments	• Several requirements of justifications and documentation go beyond the draft DAs and the Directive. These should be removed and the focus should instead be on the counterparty's ability to pay.	Noted. EIOPA has analysed all of the provisions in the ITS and taken a number of steps to seek to ensure that they are consistent with the ITS empowerment of 'the procedures for granting supervisory approval for the use of ancillary own funds'. As a result, EIOPA has restructured the ITS to be explicitly based on the criteria in the Solvency II Directive and Implementing Measures, principally the loss-absorbency of the item, the status of the

				counterparties, the recoverability of the funds, and information on past calls. EIOPA has also redrafted some of the provisions to ensure that the requirements regarding supporting evidence either closely match the drafting of, or can be directly linked to, the Solvency II Directive and Implementing Measures requirements. EIOPA does not agree that the focus should be only on the counterparty, as the 'ability of the counterparty to pay' is not the only criterion in the assessment of the own-fund item.
			• The extent to which these ITSs are really useful (although provided for by the Directive) appears to be limited. The draft Delegated Acts are already precise on the requirements and criteria to satisfy, therefore the ITSs are only needed to give precision on the supervisory process, especially since Guidelines are also foreseen on this aspect.	Not agreed, EIOPA has sought to specify the evidence that is needed in order for the criteria for approval set out in the Solvency II Directive and Implementing Measures to be satisfied. EIOPA believes that this is important to support the stated objective of

				promoting consistent procedures across member states.
			• Proportionality should be mentioned in the text. The ITS should be applied in a proportional way.	Partially agreed. In accordance with the Solvency II Directive, the principle of proportionality applies to all Solvency II regulations whether it is explicitly stated or not. Therefore, where it is not explicitly mentioned, this does not mean that in principle proportionality cannot apply to the approval of ancillary own fund items. EIOPA does not, however, consider that the approval of ancillary own-fund items requires particular treatment or requirements from the perspective of proportionality, as the proportionate treatment will be linked to the nature, scale and complexity of the risks posed by the ancillary own fund item. Therefore, EIOPA does not agree that it is

				necessary or appropriate to mention this principle in the text of the ITS. Nevertheless, it is clarified in the impact assessment that proportionality is linked to the complexity of the ancillary own-fund item which would affect the nature of the information that would need to be provided to the supervisory authority.
2.	AMICE	General Comments	AMICE welcomes the opportunity to comment on this Consultation Paper on the Implementing Technical Standards with regards to the Supervisory Approval to use Undertaking Specific Parameters. The time frames for each phase of the approval process should be reasonable and should not take longer than 3 months in exceptional circumstances (1 month to decide if the application is complete and 2 months to take a decision). In normal circumstances this period should be limited to 2 months (1+1). EIOPA should bear in mind that the timescales by which the ancillary own-fund items might be required can be very short.These funds can be required when an undertaking breaches the SCR, during stress periods and as part of the recovery plan required by the supervisor authority which will most of time be on a 9 months time frame. In times of stress, the approval period for ancillary own funds should be shortened to 2 weeks.	Not agreed. EIOPA does not agree that it will be possible to make a decision on an application within two months in all cases. EIOPA has set an upper limit for a supervisor to decide on an application of 3 months in normal circumstances and 6 months in exceptional circumstances. EIOPA expects that in some cases it will be possible to make a decision in a shorter time period, but due to the potential for

				some items to be complex, it is important for supervisory authorities to have sufficient time to ensure that they can properly assess each application and decide if all the relevant criteria are met. Furthermore, Article 6 requires that the period of time taken is reasonable, which means that supervisory authorities need to consider what is reasonable given the nature of the request. Therefore supervisory authorities would not be expected to take the 3 month time period in all cases, in particular for less complex applications. Supervisory authorities would also be expected to take into account the circumstances of a SCR breach. Regarding the approval of ancillary own fund when the SCR has been breached, EIOPA would like to underline that ancillary own funds

				should not be viewed solely as a short-term fix; applying for the approval of new ancillary own funds will not necessarily be the appropriate solution to the breach. Ancillary own funds require an approval process because of their contingent nature. The approval process needs to be sufficiently robust to ensure that items can in practice be used to absorb losses. Should the SCR be breached, the undertaking would also be expected to consider if they can reduce their risks, and how they can increase their basic own funds. Furthermore, an undertaking is required to have a medium term capital management plan in which it would need to consider how it will maintain an appropriate level of own funds over time and its ability to raise capital as needed. Having said that, should an undertaking be in

				breach of the SCR, the supervisory authority will be alerted to this, and it is expected that a close dialogue will need to take place between the undertaking and the supervisory authority.
			EIOPA should not allow the supervisory authorities to extend the consideration period. Should the supervisory authorities remain silent after the consideration period has elapsed, the ancillary own fund item should be considered as approved.	Not agreed. The ITS oblige supervisory authorities to come to a decision within the prescribed time periods. The Solvency II Directive is clear in its requirement of a prior approval in Article 90. This means that the application shall not be considered as approved or rejected without a prior decision by the supervisory authority.
			We welcome the explicit inclusion of the principle of proportionality. We are alerted, however, by the fact that reference to proportionality is made here only in the Impact Assessment section and with regard to the complexity of the ancillary own fund item for which approval is sought. What we miss is a clear commitment to proportionality also in the supporting evidence to be provided and in the area of procedures for supervisory authorities.	Please see comment 1 above.

			We disagree with the requirement to inform in the cover letter about other applications submitted by the firm. We do not see how this can provide useful information for assessing the approval of ancillary own funds.	Not agreed. Some approval processes can be co-dependent and it is important to ensure that supervisors are aware of other applications in process or planned. Please also see the response to comment 20 below.
3.	CFO Forum and CRO Forum	General Comments	Thank you for opportunity to comment on CP-14-04. The CFO Forum and CRO Forum welcome the publication of this consultation paper. We have set out our comments on the individual articles of the paper below, which are suggested to increase the flexibility of the approval process for Ancillary Own Funds items, in particular in times of stress. We also believe that the period within which a supervisory authority may decide on the application should be shortened, and that certainty is needed for undertakings should a decision not be reached by the supervisory authority within the prescribed period. We would also note in general that the references to the draft Delegated Acts in the ITS will need to be updated as the Delegated Acts are finalised and adopted.	Please see responses to 1 and 2 above. Agreed regarding the references. EIOPA has updated the references based on the Implementing Measures which have now been published.
4.	Financial Supervisory Authority of Romania (ASF)	General Comments	a few paragraphs refers to potential ancillary own fund items and all the others to ancillary own fund items	Agreed. EIOPA has deleted the term 'potential'.
5.	Insurance Europe	General Comments	1. Insurance Europe welcomes the Implementing Technical Standards (ITSs) provided to undertakings in seeking supervisory approval of their ancillary own fund (AOF) items and the opportunity to comment on them. While administrative law and supervisory practice vary among Member States, it is important to set a common denominator that reflects administrative best practice and does not become too bureaucratic. The ITSs should be drafted in such a manner that they do not provide an undue burden for industry and for supervisors. Therefore, the principle	Please see the response to comment 1 and 2 above.

			of proportionality should be applicable to the documentation to provide in the applications. One of the key concerns of the industry is that the usefulness of this paper is questionable despite the legal obligation to issue it following Omnibus II. Indeed, Articles 52 AOF2 to 57 AOF7 in the draft Delegated Acts (DAs) are precise and there is less scope for interpretations. In particular, we believe that several aspects of Article 5 of these ITSs are a mere repetition of the draft Delegated Acts and as such should be deleted. In our point of view these ITSs will not lead to much additional value in terms of "ensuring a consistent application of AOFs". The guidance also foreseen on this aspect would be sufficient. We understand that it is difficult to define definitive attributes for instruments that can be deemed AOFs by regulators in advance of the products being developed. Hence we appreciate the attempt to make the process for approval more transparent. If there are criteria such as duration that need to be met, these should be made transparent. Furthermore, we expect that AOFs will be used as a measure to manage the expected volatility in both the SCR and own funds calculations of insurers. It therefore seems to be essential that AOFs can be provided on very short notice. Presumably, the provision of AOFs will frequently be required close to year end. In order to ensure a thorough as well as efficient approval process that works despite potentially very tight deadlines, and in order to provide relief for both the supervisory authorities and the insurers, we propose that a pre-approval process be established, or "fast-track" processes, should similar items be submitted to supervisory approval. This holds also for the preparatory phase, where we see no reason why the AOFs could not already get (pre-)approved. We would expect in particular the following AOF instruments to be used (see Article 62 COF5 of the draft DAs):	Please see the response to comment 1 above. Not applicable. The ITS do not set out criteria for approval, only the procedures for approval. Not agreed. Please see the response to comment 2 above. In addition, the SCR has to be complied with throughout the year and not only at the end of the year. EIOPA also does not agree that a 'pre-approval' process should be introduced, which would not cover all aspects of the assessment and would

			• Group-internal: ☐ unpaid and uncalled ordinary share capital, ☐ commitment (guarantee) to subscribe and pay for subordinated liabilities on demand, ☐ call for supplementary contributions in the case of mutual or mutual-type associations; • Group-external: letters of credit and guarantees. For those the definition of a pre-approval process would alleviate the burden of work for both supervisors and undertakings. Indeed, we believe that of the criteria which have to be assessed by the supervisor, only the "assessment of the counterparties' ability to pay" (Article 53 AOF3), ie their financial soundness, would need to be assessed shortly prior to the approval of the AOFs; anything else could be assessed and thereby pre-approved early in advance. In addition to this, also to help to alleviate the burden for both supervisors and undertakings, we would strongly recommend to settle pre-approval processes for AOFs during the preparatory phase, before the formal approval process starts in 2015. It is precisely the aim of the preparatory phase to help undertakings to prepare for Solvency II. Besides, the pre-approval processes would help to anticipate the large number of undertakings that are likely to ask for the approval of their AOFs and, more importantly, allow them to make use of AOF instruments during the preparatory phase.	risk lengthening and further bureaucratising the approval process. The approval processes envisage ongoing communication between the supervisory authorities and undertakings, including before the application is submitted. In particular, EIOPA proposed in CP 14/036 - Consultation Paper on the proposal for Guidelines on Solvency II relating to Pillar 1 - that some aspects of the ancillary own fund application may be discussed with the supervisory authority before the formal application is submitted. EIOPA has decided to move this text to the recital of the ITS, as it relates to the approval process. The recitals to the ITS on approval processes for matching adjustment, undertaking specific parameters and ancillary own funds have been aligned on this aspect. The scope of the

				preparatory phase will not be changed at this stage of the process. The Solvency II Directive and the ITS provide for the submission of applications from 1 April 2015 which will provide time for ancillary own funds applications to be submitted and assessed before Solvency II is applicable on 1 January 2016. As part of the ongoing communication envisaged above, EIOPA would expect there to be communication between supervisory authorities and undertakings before 1 April 2015 as part of the regular supervisory review process.
			Besides, we deplore the lack of consistency across all the different ITSs on approval processes. In line with the ITSs on the Internal model approval, we believe that where the supervisory authorities request further information, the decision for a suspension of the six months approval period should be left up to the insurance or reinsurance undertaking.	EIOPA does not agree that there is a lack of consistency across the different ITS generally. Regarding the specific difference highlighted, the approach taken in the ITS on internal model approval reflects the fact that the

				Solvency II Directive prescribes a six month time period for the assessment of internal models applications. Where a time period is not set in the Solvency II Directive, the empowerment for the ITS include the setting of appropriate time periods and how they should operate. Regarding the approach taken, the suspension of the time frame for decision has been kept in the ITS. EIOPA considers that a suspension would be more cost-efficient for undertakings and supervisory authorities than having to resubmit or reassess an application respectively following a rejection, due to any necessary additional information not being provided in a timely manner. EIOPA has, nevertheless, considered undertakings' concerns that this would create the potential for an undue prolongation of the process without legal

				certainty on timely decisions. Therefore, the Article has been reviewed in this regard: supervisory authorities will have to apply this option under the objective constraints of showing the necessity and justification for the additional information and being specific as to the additional information required. EIOPA will also monitor the application by NCAs of the possibility to suspend the time period.
			Last but not least, we disagree with the lack of approval if no response from the supervisory authority is reached within the deadline. Supervisors shall not remain silent and further clarity should be provided in this respect. Should this happen and when the timeline for approval has elapsed, the undertaking should be able to consider that its AOF item has been approved and be allowed to use it. Indeed, there is no justification to leave an undertaking in a situation of uncertainty when the application is complete and receipt of submission has been received. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	Please see the response to comment 2 above.
6.	INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON	General Comments	While the need for regulatory oversight of the use of ancillary own funds is evident, it appears to us that the proposed technical standards could be much less exhaustive and prescriptive, as the essential requirements are already laid down in the delegated acts and will also be covered by guidance. Compliance with all the detailed requirements set out would also be onerous for firms and we would suggest that supervisors should	Not agreed. As set out in the impact assessment, EIOPA believes that the information requested is necessary to assess the application against the

			take a proportionate approach, matching the potential supervisory benefits arising from the standards to the cost of their implementation.	criteria in the Solvency II Directive and Implementing Measures. As such the ITS are not imposing additional costs to those necessary as a result of the Solvency II Directive and Implementing Measures. Please also see response to comment 1 above.
7.	IRSG	Article 2	• Article 2 (definitions): The "material facts" definition seems to be too general; We suggest this paragraph to be reworded so that only facts which can significantly impact the supervisor´s decisions will be included under the scope of material facts.	Not agreed. EIOPA has removed the definition and incorporated the text into Article 2(1)(e). The request is for details that could influence the supervisor's decision as to whether to approve an ancillary own-fund item and the amount of that item. These details would therefore be significant and critical to the application.
8.	AMICE	Article 2	The "material facts" definition seems to be too general; We suggest rewording this paragraph so that only facts which can significantly impact the supervisor´s decisions are included under the scope of material facts.	Please see the response to comment 7 above.
9.	Insurance Europe	Article 2	Since Article 57 AOF7 (4) already defines a "material change", we believe the wording in the ITSs should be aligned with the draft DAs and therefore this definition might be dropped. Should this definition be kept, we would suggest to include it in Article 4 (1)(f) since the only reference to "material facts" is done there.	Partially agreed. The definition is not needed because the term is only used once in the text. The text has therefore been incorporated into

				Article 2(1)(e). Article 57(2) AOF 7 in the document 'Annex to the EIOPA consultation on the ITS for Solvency II' did provide a definition of material change. However, this provision is no longer included in the Implementing Measures now published by the European Commission.
10.	IRSG	Article 3 (4)	• The requirement that the application letter should be signed by persons on behalf of the AMSB is not in line with neither the Level 1 nor the Level 2. • The application should be forwarded by the undertaking's administrative, management or supervisory body. If required, the supervisor may check that the decision making process and documentation has been appropriate, and that the application has been appropriately signed.	Not agreed. The requirement is consistent with the Solvency II Directive and Implementing Measures. The important point stated in the ITS is that the application needs to be approved by the administrative, management or supervisory body (AMSB), and in other words that the AMSB has taken responsibility for the contents of the application. Regarding the signature (which is separate to the approval), the point is that the application should be signed by

				someone who is authorised to do so. The ITS do not specify exactly who this person should be, as it is recognised that this may depend on national corporate law, and that it may or may not be an AMSB member.
			• It would be helpful to clarify if management (as one would expect) or board of supervisors should approve the application for approval of an ancillary own fund item in a two-tier board system	Not agreed. Regarding the management or supervisory body, the Solvency II Directive and Implementing Measures do not differentiate between one and two-tier board systems and how the different tasks and responsibilities arising from Solvency II should be divided between these two boards. It is therefore subject to member state transposition of the Solvency II Directive and national corporate law.
11.	Federation of European Accountants (FEE)	Article 3 (4)	FEE suggests that EIOPA should clarify whether management or board of supervisors should approve the application for the approval of an ancillary own fund item in the case of a two-tier board system.	Please see the response to comment 10 above.
12.	IRSG	Article 3 (5)	• The requirement that the application letter should be signed by persons on behalf of the AMSB is not in line with neither the Level 1 nor	Please see the response to comment 10 above.

			the Level 2. • The application should be forwarded by the undertaking's administrative, management or supervisory body. If required, the supervisor may check that the decision making process and documentation has been appropriate, and that the application has been appropriately signed.	
13.	AMICE	Article 3 (5)	The requirement that the application letter should be signed by persons on behalf of the AMSB is not in line with either the Level 1 or the Level 2.	Please see the response to comment 10 above.
14.	IRSG	Article 4 (1)	• EIOPA writes in paragraph 1 c) that the "economic substance" of a potential ancillary own-fund item, including how the item provides basic own funds once called, should be fully reflected in the application. In paragraph 1b) EIOPA states that the assessment of the ancillary own fund should be prudent and realistic. Further guidance is needed on how these two concepts should be combined; Should "economic substance " be understood as a "realistic consideration" or in line with the economic balance sheet approach ?	Noted. The concept of economic substance is referred to in recital 28 of the Implementing Measures. It requires undertakings to reflect how the ancillary own-fund item is designed to absorb losses in practice and not for example to simply rely on the item's legal form. EIOPA has drafted explanatory text to Article 2 to explain this point. 'Prudent and realistic' is the term used in Article 90(2) of the Solvency II Directive.
15.	AMICE	Article 4 (1)	EIOPA writes in paragraph 1 c) that the "economic substance" of a potential ancillary own-fund item, including how the item provides basic own funds once called, should be fully reflected in the application. In paragraph 1b) EIOPA states that the assessment of the ancillary own fund should be prudent and realistic. Further guidance is needed on how	Please see the response to comment 14 above.

			these two concepts should be combined; Should "economic substance" be understood as a "realistic consideration" or in line with the economic balance sheet approach?	
16.	Federation of European Accountants (FEE)	Article 4 (1)	Article 4 (1) (b) : FEE suggests changing « prudent and realistic » to « realistic ». Arguably « realistic » implies neutrality while « prudent » does not.	Please see the response to comment 14 above.
17.	Insurance Europe	Article 4 (1)	Regarding the contents of point (1)(a) of this Article 4, we believe this type of check should rather be done by the supervisor, instead of laying all the burden and responsibility of proof on the undertaking.	Not agreed. It should be the core interest and responsibility of the undertaking to check the clarity of the contractual terms of the ancillary own-fund item. The supervisory authority is then required to assess this based on the information provided by the undertaking as part of its review of the application.
18.	AMICE	Article 4 (2)	We disagree with the requirement to inform in the cover letter about other applications submitted by the firm. We do not see how this can provide useful information for assessing the approval of ancillary own funds.	Please see the response to comment 2 above.
19.	Financial Supervisory Authority of Romania (ASF)	Article 4 (2)	art. 308a (2) does not list any items, it refers to the powers of the supervisors; maybe 308a (1)?	Agreed. It has been corrected following the publication of Directive 2014/15/EU (Omnibus II).
20.	Insurance Europe	Article 4 (2)	This requirement is onerous and we do not see the rationale to ask for such details. We do not see how the fact to apply eg for the approval of an SPV is supposed to influence the supervisory decision to approve or not an AOF.	Not agreed. Please see the response to comment 2 above. Furthermore, EIOPA

			We believe instead that supervisors should be keeping track in any case of all the applications done by an undertaking –and are probably already doing it-. Therefore there is no need for this additional requirement made to undertakings. Should this still be applied, we understand this request as providing a simple note appended to the application at hand and destined to let the authorities know -via a reference number for instance- that there are other applications for approval for which a response is still pending. At least, clarification is needed as to the fact that the requested information submitted already earlier for the sake of any one application currently being processed must not be submitted again alongside of the present application.	considers this to be a straightforward task as the requirement is to inform the supervisory authority of such applications and not, for example, to submit additional information or to resubmit information that has previously been submitted for other applications. EIOPA has adjusted the wording to clarify that the request is for undertakings to list other applications in the cover letter.
21.	INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON	Article 4 (2)	In our view, this requirement is excessive in that supervisors will already have access to the information and will be monitoring on a regular basis.	Please see the response to 2 above.
22.	IRSG	Article 5 (1)	• EIOPA is requiring firms to submit confirmation that national law, in any relevant jurisdiction, does not prevent a call being made including in case of resolution, administration or insolvency proceedings have been initiated against the firm". • In our view this sentence should be deleted, because this should be the task of the supervisors.	Not agreed. It should be the core interest and responsibility of undertakings to check the circumstances under which an ancillary own fund item can be called up to absorb losses in order to meet its obligations to policyholders. The supervisory authority will then need to make an

			• Ancillary own funds are often used during "deteriorating financial conditions" so point (e) seems to be in contradiction with those objectives and overly burdensome for firms.	assessment on the recoverability of the funds based on the information provided by the undertaking. Not agreed regarding point 5(e). According to the Solvency II Directive, ancillary own funds are items that can be called up to absorb losses. Should there be any limitations on the item's ability to absorb losses, supervisory authorities are obliged to take this into account in deciding on whether to approve the ancillary own-fund item.
23.	AMICE	Article 5 (1)	EIOPA is requiring firms to submit confirmation that national law, in any relevant jurisdiction, does not prevent a call being made including in the case where resolution, administration or insolvency proceedings have been initiated against the firm. This sentence should be deleted, because this should be the task of the supervisors. Ancillary own funds are often used during "deteriorating financial conditions" so point (e) seems to be in contradiction with those objectives and overly burdensome for firms.	Please see the response to comment 22 above.

24.	Insurance Europe	Article 5 (1)	We believe several of the listed requirements go beyond what is requested in the Framework Directive or in the draft DAs. They are too extensive and vague and therefore not helpful to provide a consistent application. Moreover, Article 53 AOF3 of the draft DAs is focused on the status of the counterparties (ability to pay). Therefore the link with the undertakings current or future solvency position is not obvious.	Please see the response to comment 1 above. Not agreed. The criteria for approval are not only the status of the counterparties, but also the loss absorbency of the item and the recoverability of the funds. Therefore, should the current or future solvency position of the undertaking affect the availability of the item or its ability to absorb losses, it is a relevant element.
25.	INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON	Article 5 (1)	We believe that the proposed requirements are excessive and it is not clear to us what tangible supervisory benefit would arise from them.	Please see the response to comment 1 above.
26.	IRSG	Article 5 (2)	• In paragraph 2(a) the term"affiliated arrangements" can be replaced by "commitments" as the translation seems to be a problem in several countries.	Noted. The terms 'arrangements' and 'commitments' are both used in Article 62 of the Implementing Measures. EIOPA decided that the term 'affiliated' may create some confusion and therefore has

				changed the text to 'connected' which it considered to be clearer.
27.	AMICE	Article 5 (2)	In paragraph 2(a) the term"affiliated arrangements" can be replaced by "commitments" as the translation seems to be a problem in several countries	Please see the response to comment 26 above.
28.	CFO Forum and CRO Forum	Article 5 (2)	Pre-approvals of items before signature must be allowed to allow flexibility in times of stress. Art. 5(2)a (regarding supporting evidence) requires the evidence that the counterparty has entered into the contract. In order to apply for approval of an item as AOF the regulation presupposes that the underlying contractual arrangements are signed and no application before signature is possible. This requirement together with long approval periods (see comments on Art. 7(5)) leads to a serious reduction in flexibility on how companies can react in a crisis situation. It should be allowed that an application can be made once terms and conditions are fixed but the contract is not yet signed.	Partially agreed. EIOPA agrees that it should not be necessary for the parties to have entered into the contract prior to receiving supervisory approval. The drafting of the ITS had followed the provision in the draft Implementing Measures (Article 52(1)(b) AOF 2 in the document 'Annex to the EIOPA consultation on the ITS for Solvency II'). However, this Article in the Implementing Measures has now been amended (Article 62) to state 'the contractual terms of the arrangement that the insurance or reinsurance undertaking has entered into, *or will enter into*, with the counterparties to provide funds'. EIOPA has therefore redrafted

				the ITS to be consistent with the Implementing Measures now published. However, it is important to state that, where an undertaking applies for supervisory approval before entering into a contractual arrangement, if it receives supervisory approval the undertaking should directly enter into the arrangement in order for the ancillary own funds to be available. Any substantive delay by the undertaking to enter into the arrangement would potentially invalidate the approval by the supervisory authority and require a new application. EIOPA has therefore added a provision to Article 7 of the ITS to state that the contract needs to be entered into without delay after the approval by the supervisory authority. Please see response to comment 5 above regarding pre-approvals in general.

29.	Federation of European Accountants (FEE)	Article 5 (2)	Article 5 (2) (a) : This article requires « evidence that the counterparty has entered into a contract »; however in practice it may be that insurers would not seek to finalise contractual arrangements with counterparties until such time as supervisory approval has been obtained. As such evidence may not exist at the point the application is submitted. Therefore, FEE suggests to delete this requirement.	Please see the response to comment 28 above.
30.	Financial Supervisory Authority of Romania (ASF)	Article 5 (2)	(c) details as to how the item would satisfy the requirement for subordination set out in Article 93 (b) of Directive 2009/138/EC; (c) details as to how the item would satisfy the requirement for subordination set out in Article 93 (1) (b) of Directive 2009/138/EC; point 2 has also a letter (b)	Agreed. This has been corrected.
31.	Insurance Europe	Article 5 (2)	Point (a) seems to be redundant with points (a) and (b) of Article 5 (1). Besides, if this point was however kept, the meaning of "any affiliated arrangement" should be clarified. We do not see the need of the requirements set out in points (b) and (e) to help supervisors to assess whether they should approve AOF items. These points go beyond the requirements set out in the draft DAs and the Directive and as such should be deleted.	Regarding 'affiliated arrangements' please see the response to comment 26 above. Please see the response to comment 1 above.
32.	INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON	Article 5 (2)	Please see our answer to 5 (1)	Please see the response to comment 1 above.
33.	IRSG	Article 5 (3)	• The requirements in paragraph 3) (c) have been also included in article 4-1d) and article 5-2b). We suggest this paragraph to be deleted.	Not agreed. However, some changes have been made to these provisions in the revised ITS. The three provisions

				listed have been moved to Article 4(2) in the revised ITS to clarify that they relate to the nature and loss absorbency of the ancillary own-fund item. The former Article 4(1)(d) in the consultation paper version relates to any factors or circumstances which in practice may prevent the undertaking from calling on the item to absorb losses. This is now Article 4(2)(g) in the revised ITS. The former Article 5(3)(c) is similar but different. It concerns any contractual provisions which may mean that in practice the undertaking does not seek to call on the item. Part of the former Article 5(3) is now Article 4(2)(e) in the revised ITS, but with a number of changes. EIOPA has removed points (a) to (d) of the former Article 5(3). EIOPA still believes that these are necessary features for an item to

				be 'callable on demand'. However, EIOPA decided that these provisions were not strictly part of the procedure for ancillary own funds approval but related to the nature of ancillary own funds more generally. EIOPA therefore intends to address this issue in the Guidelines on Ancillary own funds, which were consulted on as part of the public consultation on CP 14/036. This would be part of EIOPA's objective to ensure consistent supervisory practices and the common application of the Solvency II Directive and Implementing Measures. The former Article 5(2)(b) relates to the loss absorbency of the item being undermined in practice because, for example, its benefits upon being called up would be assigned to a third party. This is now Article 4(2)(f) in the revised ITS.

34.	AMICE	Article 5 (3)	The requirements in paragraph 3) (c) have been also included in article 4-1d) and article 5-2b). We suggest deleting this paragraph.	Please see the response to comment 33 above.
35.	CFO Forum and CRO Forum	Article 5 (3)	Calls of the AOF that are contingent on the Solvency ratio falling below a threshold must be allowed. Art. 5(3)a (regarding supporting evidence) requires confirmation that the AOF item does not contain disincentives to call upon the item or constraints to be called on demand and mentions as a specific example that the call must not be contingent on the occurrence of an event or criteria being met. A conceivable condition in the terms and conditions of an AOF item is that a call is contingent on the actual SCR ratio falling below a certain threshold. This condition is certainly not a disincentive to call the item in case it is needed. However under current wording this item seems to be disallowed.	Not agreed, but some changes have been made to this provision in the revised ITS. Please see the response to comment 33 above.
36.	Insurance Europe	Article 5 (3)	This goes beyond the draft DAs which state that "the supervisory authorities shall base their approval on an assessment of the counterparties' willingness to pay, taking into account […] whether incentives or disincentives exist which may affect the counterparties' willingness to satisfy their commitments […]". The wording and spirit of the ITSs should be aligned with the draft DAs.	Not agreed. The status of the counterparties is not the only criterion upon which the ancillary own fund application is assessed. Please also see the response to comment 1 above.
37.	INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON	Article 5 (3)	Please see our answer to 5 (1)	Please see the response to comment 1 above.
38.	IRSG	Article 5 (6)	• The supporting evidence the undertakings have to provide the supervisory authority with seems to be quite comprehensive. Some of the requirements seem to be hard/costly to fulfill, i.e. "provide data relating to the undertaking´s experience of past calls from the same or similar counterparties in the same or similar circumstances and relevant	Noted. The requirement to provide information on past calls stems directly from the Solvency II Directive (Article

			market data together with an assessment as to the relevance and reliability of such data.	90(4)(c)) and the Implementing Measures (Article 65).
39.	Federation of European Accountants (FEE)	Article 5 (6)	FEE suggests that clarification should be given as to what is considered to comprise 'relevant market data' and whether the insurer is only required to submit such data to the extent it already holds it or whether it is required to make specific efforts to obtain such data.	Agreed. EIOPA has clarified in the revised Article 4(5) that the market data concerns information on past calls or the collection of other funds due from the same or similar counterparties in the same or similar circumstances, to the extent that that data is available. Should an undertaking not hold any such data, it would be expected to take steps to acquire it, however only to the extent that this data is available and accessible to the undertaking.
40.	Insurance Europe	Article 6	We think supervisory authorities should also be planning all the approval processes and ensure that they will have the necessary resources to allocate to those, in order to be able to provide their approval in a timely manner and as a maximum within the length of the periods defined in the ITSs.	Noted. EIOPA agrees and believes that this is the case as already required by the Solvency II Directive (see recital 17 and Article 27) and confirmed by this Article.
41.	INTERNATIONAL UNDERWRITING	Article 7 (1)	We believe that the supervisory authority should implement an active internal policy of ensuring that approvals are provided promptly and	Please see response to comment 5 above

	ASSOCIATION OF LONDON		that there is a regular dialogue with firms about progress and any issues that may arise.	regarding regular dialogue with undertakings.
42.	Insurance Europe	Article 7 (3)	It has to be also clarified that if the supervisor has overrun the allotted one month period to notify whether the application is complete, the countdown will in any way start after the date of receipt of the application. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	EIOPA believes that the approval process is defined and will not result in a never ending process. A number of safeguards are built into the process. Supervisory authorities are obliged to confirm if the application is complete or not within 30 days. In the unlikely event that this obligation is not met it does not affect the overall time periods for assessing the application if the application is complete. As stated in Article 6(4) and (5), the deadlines apply from the date of receipt of a complete application. If the application is complete, the deadline applies from the date that the application was received by the supervisory authority and not the date on which the supervisory authority confirmed if they considered the

				application to be complete. If the application is not complete, it is important that the time period for assessing the application does not start until a complete application is received so that the supervisory authority has the necessary information and time to make a decision.
43.	IRSG	Article 7 (4)	• The "stop-the clock" mechanism (the time required to submit further information) is not in line with the Level 1 text and it could delay enormously the whole process. • Supervisory authorities should do everything in their power to reach a decision on the application as quickly as possible and within one month of receipt of the complete application. • The time frames for each phase of the approval process should be reasonable and should not take longer than 3 months in exceptional circumstances (1 month to decide if the application is complete and 2 months to take a decision). In normal circumstances this period should	Not agreed. Please see the response to comment 5 above. In addition, EIOPA does not agree that the 'stop –the-clock' mechanism is not in line with the Solvency II Directive, which does not include a time period for the approval of ancillary own-fund items. Please see the response to comment 2 above.

			be limited to 2 months (1+1). • EIOPA should bear in mind that the timescales by which the ancillary own-fund items might be required can be very short. In that sense, those funds can be required when an undertaking breaches the SCR, during stress periods and as part of the recovery plan required by the supervisor authority which will be most of time on a 9 months time frame.	
44.	AMICE	Article 7 (4)	Supervisory authorities should do everything in their power to reach a decision on the application as quickly as possible and within one month of receipt of the complete application.	Please see the response to comment 2 above.
45.	Insurance Europe	Article 7 (4)	As stated in our general comments, we expect that AOFs will be used as a measure to manage the expected volatility in both the SCR and own funds calculations of insurers. It therefore seems to be essential that AOFs can be provided on very short notice. Presumably, the provision of AOFs will frequently be required close to year end. In order to ensure a thorough as well as efficient approval process that works despite potentially very tight deadlines and many applications from different undertakings, and in order to provide relief for both the supervisory authorities and the insurers, we propose that a pre-approval process be established, or "fast-track" processes, should similar items be submitted to supervisory approval. We would expect in particular the following AOFs instruments to be used (see Article 62 COF5): • Group-internal: ☐ unpaid and uncalled ordinary share capital, ☐ commitment (guarantee) to subscribe and pay for subordinated liabilities on demand, ☐ call for supplementary contributions in the case of mutual or mutual-type associations; • Group-external: letters of credit and guarantees. For those the definition of a pre-approval process would alleviate the burden of work for both supervisors and undertakings.	Please see the responses to comments 2 and 5 above.

			Indeed, we believe that of the criteria which have to be assessed by the supervisor, only the "assessment of the counterparties' ability to pay" (Article 53 AOF3), ie their financial soundness, would need to be assessed shortly prior to the approval of the AOFs; anything else could be assessed and thereby pre-approved early in advance.	
46.	AMICE	Article 7 (5)	The time frames for each phase of the approval process should be reasonable and should not take longer than 3 months in exceptional circumstances (1 month to decide if the application is complete and 2 months to take a decision). In normal circumstances this period should be limited to 2 months (1+1). EIOPA should bear in mind that the timescales by which the ancillary own-fund items might be required can be very short. These funds can be required when an undertaking breaches the SCR, during stress periods and as part of the recovery plan required by the supervisory authority which will generally be on a 9 month time frame. In times of stress, the approval period for ancillary own funds should be shortened to 2 weeks.	Please see response to comment 2 above.
47.	CFO Forum and CRO Forum	Article 7 (5)	We would suggest that the regular approval period for AOF of 3 months needs to be shortened to 2 weeks in order to facilitate effective capital management in times of stress. Art. 7(4) (regarding the assessment of the application) requires that the period of time for decision on the application by the supervisor is reasonable (a) and does not exceed 3 months (b) from the receipt of the complete application. Art. 7(5) regulates that even under exceptional circumstances the time taken should not exceed 6 months. ☐ This approval periods need to be seen in conjunction with the requirements of Art. 138(3) of Directive 2009/138/EC, where undertakings after a breach of the SCR are required to re-establish the level of eligible own funds within 6 months. Substantial lead time after the breach is required to find and negotiate with counterparties over AOF items before an application for AOF to cover the SCR is ready to be filed.	Please see response to comment 2 above.

			☐ Once an SCR breach has occurred it is market expectation that undertakings act quickly and the regulatory framework should support a quick reaction. AOF are expected to become important in this respect: Art. 59 COF2 Nr.6 requires a write-down of Tier 1 instruments if the non-compliance extends over more than 3 months. This would be a reputationally significant event and could be avoided by raising additional AOF in a timely manner. ☐ The supervisory authority therefore should be obliged to decide over the application within 2 weeks. This will increase the ability of undertakings to manage an SCR breach within the prescribed time limits.	
48.	Insurance Europe	Article 7 (5)	See our comments on Article 7 (4). The exceptional circumstances should in any case be defined if they were to remain, but the length of the period taken by the supervisor to approve should be decreased.	Not agreed. As stated in the impact assessment EIOPA concluded that, since ancillary own-fund items are a new form of regulatory own funds for some types of undertaking, and to enable national supervisory authorities to respond to market developments, it is not appropriate to be more definitive about what 'exceptional circumstances' could be. On the time periods, please see the response to comment 2 above.
49.	AMICE	Article 7 (7)	The "stop-the clock" mechanism (the time required to submit further information) is not in line with the Level 1 text and it could significantly delay the whole process. We suggest deleting this paragraph .	Please see response to comment 2 above.

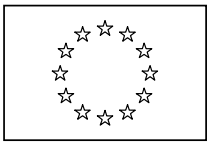
50.	Insurance Europe	Article 7 (9)	As stated above, we believe that when an application changes only slightly or when similar applications are submitted, the new or additional ones should be treated more quickly than what is foreseen in Article 7 (4) and (5) of the ITSs.	Noted. The time periods stated in Article 6 are upper limits and do not preclude a decision by a supervisory authority in a shorter time period where this is reasonable. EIOPA does not believe that this eventuality requires an explicit provision. Please also see the response to comment 1 above.
51.	Insurance Europe	Article 7 (10)	It should be made clear that the second sentence only refers to eventual updates after a withdrawal of the application. Otherwise we refer to our comment on Article 7 (9).	Agreed. EIOPA has sought to clarify the text.
52.	Insurance Europe	Article 8 (1)	The supervisory authority shall communicate the decision immediately once it is taken. This would be aligned with other ITSs.	Noted but no change has been made to the provision. Once supervisory authorities have made a decision there should be no undue delay in this being communicated to the undertaking. However, some steps may need to be taken by the supervisory authority following their decision, for example where the application has been rejected the supervisory authority will need to prepare its statement of the reasons on which the

				decision is based. EIOPA has not therefore changed the drafting of the provision. It should also be noted that supervisory authorities are obliged to comply with the time periods set out in Article 6, and thus to communicate their decision according to the time period of 3 month unless there are extraordinary circumstances.
53.	AMICE	Article 8 (3)	EIOPA should not allow the supervisory authorities to extend the consideration period. Should the supervisory authorities remain silent after the consideration period has elapsed, the ancillary own fund item should be considered as approved.	Please see the response to comment 2 above.
54.	CFO Forum and CRO Forum	Article 8 (3)	The consequences of regulator's silence after the approval period needs to be laid out to avoid uncertainty. Art. 7(5) (regarding the assessment of the application) in conjunction with Art. 8(3) regulates that if the authority has not decided on the application within the required period (6 months) the undertakings must not consider the application as approved. The ITS leave open any further process steps after the authority has failed to meet the deadline. No incentive to the authority is given to accelerate the internal decision finding, resulting in prolonged legal uncertainty for the undertakings. This could result in deteriorating conditions for the undertaking to raise funds and increased likelihood of company failure. A potential solution could be to consider the approval as granted once an additional period of time has elapsed.	Please see the response to comment 2 above.
55.	Insurance Europe	Article 8 (3)	In line with our comment on Article 7 (3), when the time line for approvals has elapsed, the company should be allowed to consider the AOF item as approved. In such a case, there is no justification to leave	Please see the response to comment 2 above.

			an undertaking in a situation of uncertainty when the application is complete and receipt has been received. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	
56.	Insurance Europe	Article 9 (1)	We believe that supervisory dialogue should take place with the undertaking before proceeding to any of the changes mentioned in this paragraph.	Noted, such dialogue is not precluded by Article 9(1) in the consultation paper version (which is now Article 8(1 in the revised ITS), but it is not considered to be part of the formal application process.
57.	Insurance Europe	Explanatory Text	Regarding Example 1 we refer to our comment on Article 7 (3). We believe that in any case there should be a regular dialogue between the supervisory authority and the undertaking, which would easily avoid that an application is simply lost. We disagree with Example 2. The length foreseen for the approval period is already too high so we do not agree with the suspensions foreseen in case of a request for further information or the fact that the time period runs from Day 1 only if the supervisory authority considers the application complete from the start. Given all the aspects and criteria covered in an application, we believe that even if some parts were missing the supervisory authority could already start reviewing the application while the undertaking does its best to provide the missing parts in a timely manner. Therefore the period should not be interrupted, except if too many parts were missing. We would however assume that the undertaking's administrative, management or supervisory body would only forward applications they consider to be complete.	The example provided in the explanatory text is merely an illustration of the process described in Article 6. Please see the responses above.
58.	Insurance Europe	Annex I Section 5	We still believe that some AOFs will be relatively generic and as such should benefit from an easier and faster approval process.	The ITS set out the procedures for all ancillary own-fund items.

				As stated above, supervisory authorities are obliged to consider the application within a reasonable timeframe bearing in mind the nature of the particular application.
59.	Insurance Europe	Annex I Overall Conclusion	We believe the degree of details of the requirements listed and all the information to be provided to supervisory authorities will generate a significant cost for undertakings.	Please see the response to comment 6 above.

Annex III: Draft Implementing Technical Standard



EUROPEAN COMMISSION

Brussels, XXX
[…] (2011) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of [ ]

COMMISSION IMPLEMENTING REGULATION (EU) No …/… laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items according to Directive 2009/138/EC of the European Parliament and of the Council

of [ ]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), and in particular Article 92 (3) thereof,

Whereas:

(1) This Regulation establishes the procedures to be followed for the supervisory approval of ancillary own-fund items.

(2) Insurance and reinsurance undertakings should prepare applications on a prudent and realistic basis and their administrative, management or supervisory body should approve the submission of the application in order to ensure the appropriateness of the information.

(3) The insurance or reinsurance undertaking should include all relevant facts necessary for an assessment by the supervisory authority, including an assessment by the insurance or reinsurance undertaking of how the item would meet the criteria for an ancillary own-fund item and, on being called up, for classification as a basic own-fund item so that the supervisory authority can make timely decisions based on appropriate evidence.

(4) The information to be included in an insurance or reinsurance undertaking's application should be specified to ensure a consistent basis for decision-making by the supervisory authority.

(5) The ability for supervisory authorities and insurance and reinsurance undertakings to assess the status of a group of counterparties as though it were a single counterparty is considered to be particularly relevant where a mutual or mutual-type undertaking has a large number of homogeneous non-corporate members from whom it can make a call for supplementary contributions.

(6) Supervisory authorities should adopt adequate procedures to manage the approval process.

(7) The ancillary own funds approval process envisages ongoing communication between the supervisory authorities and insurance and reinsurance undertakings. This includes communication before a formal application is submitted to the supervisory authority and after an application has been approved, through the supervisory review process. Such ongoing communication is necessary to ensure that supervisory judgements are based on relevant and up-to-date information.

(8) When the supervisory authority receives notification from an insurance or reinsurance undertaking that there has been a reduction in the loss-absorbency of an approved ancillary own-fund item, the supervisory authority should revise downward the approved amount or withdraw its approval of the method in order to ensure that it is consistent with that reduced loss-absorbency.

(9) Article 226 of Directive 2009/138/EC permits a group to apply for ancillary own-fund item approval in respect of an intermediate insurance holding company or an intermediate mixed financial holding company. In such cases this Regulation applies as though the intermediate

insurance holding company or the intermediate mixed financial holding company were an insurance or reinsurance undertaking. This also applies where a group is headed by an insurance holding company or a mixed financial holding company in accordance with Article 235 of Directive 2009/138/EC.

(10) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(11) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

Article 1

General features of the application

(1) An insurance or reinsurance undertaking shall submit a written application for approval of each ancillary own-fund item.

(2) The application shall be submitted in one of the official languages of the Member State in which the insurance or reinsurance undertaking has its head office, or in a language that has been agreed with the supervisory authority.

(3) The application shall be approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking, and documentary evidence of the approval shall be submitted.

(4) The application shall consist of a cover letter and supporting evidence.

Article 2

Cover letter

(1) The insurance or reinsurance undertaking shall submit a cover letter confirming that:

(a) any legal or contractual terms governing the ancillary own-fund item or any connected arrangement are unambiguous and clearly defined;
(b) the amount ascribed to the ancillary own-fund item in the application complies with Article 90(2) of Directive 2009/138/EC;
(c) the economic substance of the ancillary own-fund item, including how the item provides basic own funds once called up, has been fully reflected in the application;
(d) taking into account likely future developments as well as the circumstances at the date of the application, the insurance or reinsurance undertaking considers that the ancillary own-fund item complies with the criteria for the classification of own funds;

(e) no facts have been omitted which if known by the supervisory authority could influence its decision regarding whether to approve an ancillary own-fund item, the amount for which approval of an item shall be granted, or the time period for which approval of a calculation method shall apply.

(2) The cover letter shall also list other applications submitted by the insurance or reinsurance undertaking or currently foreseen within the next six months for approval of any items listed in Article 308a(1) of Directive 2009/138/EC, together with corresponding application dates.

(3) The cover letter shall be signed by persons authorised to sign on behalf of the administrative, management or supervisory body of the insurance or reinsurance undertaking.

Article 3

Amount or method

(1) The application by the insurance or reinsurance undertaking shall seek approval of a specified monetary amount for an ancillary own-fund item or a method to determine the amount of an ancillary own-fund item.

(2) Where the insurance or reinsurance undertaking seeks approval of a specified monetary amount, the application shall include an explanation for the amount, based on prudent and realistic assumptions.

(3) Where the insurance or reinsurance undertaking seeks approval of a calculation method, it shall provide:

(a) an explanation of the method and how it reflects the loss-absorbency of the ancillary own-fund item;
(b) a description of any assumptions upon which the method relies and how these assumptions are prudent and realistic;
(c) the item's expected initial amount that has been calculated in accordance with the method and a justification of that amount;
(d) an explanation of the validation processes the insurance or reinsurance undertaking will implement to ensure that the results of the method continue to reflect the loss-absorbing capacity of the item on an ongoing basis.

Article 4

Supporting evidence

(1) The supporting evidence shall contain sufficient information to allow the supervisory authority to assess whether the application complies with the criteria determined in Article 90 of Directive 2009/138/EC and Articles 62 to 65 of the Implementing Measures, and shall contain at least the information described in paragraphs 2 to 6.

(2) The insurance or reinsurance undertaking shall provide information regarding the nature of the ancillary own-fund item and the loss absorbing capacity of the basic own-fund item into which the ancillary own-fund item converts on being called up, including:

(a) the item's legal or contractual terms, together with the terms of any connected arrangement and evidence that the counterparty has entered into, or will enter into, the contract and any connected arrangement;
(b) evidence that the contract and any connected arrangements are legally binding and enforceable in all relevant jurisdictions, based on a legal opinion;
(c) the period during which the contract is in effect and, if different, the period during which the insurance or reinsurance undertaking may call upon the item;
(d) confirmation that the ancillary own-fund item, once that item has been called up and paid in, would display all of the features of a basic own-fund item classified in Tier 1 in accordance with Article 71 of the Implementing Measures, or all of the features of a basic own-fund item classified in Tier 2 in accordance with Article 73 of the Implementing Measures;
(e) confirmation that the item's contractual terms do not contain any provision which might create a disincentive for the insurance or reinsurance undertaking to call upon the item to absorb losses or place any constraint upon its ability to be callable on demand;
(f) confirmation that the ancillary own-fund item or its benefits would only be available to the insurance or reinsurance undertaking and would not be transferrable or assignable to any other party, or be able to be encumbered in any other way;
(g) any factors which restrict the conditions under which the insurance or reinsurance undertaking might seek to call upon the item, including but not limited to conditions of stress specific to the insurance and reinsurance undertaking or wider market stress;
(h) whether the insurance or reinsurance undertaking has, or in the future may have, any obligation to, or any expectation or understanding that it will pay funds or provide any other benefit to the counterparty or to a third party in connection with the item, other than in the event of repayment of a basic own-fund item which would satisfy the features in Article 71(1)(h), and Article 73(1)(d) of the Implementing Measures;
(i) a copy of the medium term capital management plan including how the item will contribute to the insurance or reinsurance undertaking's existing capital structure, and how the item might enable the insurance or reinsurance undertaking to meet its existing or future capital requirements.

(3) Except where Article 63(6) of the Implementing Measures applies and the status of a group of counterparties may be assessed as though it were a single counterparty, the insurance or reinsurance undertaking shall provide information regarding the status of each counterparty including:

(a) the names and a description of each counterparty, including the nature of any relationship between the insurance or reinsurance undertaking and the counterparty;
(b) an assessment of the risk of default of the counterparties in order to support the assessment by the supervisory authority specified in Article 63(2) of the Implementing Measures;
(c) an assessment of the liquidity position of the counterparties in order to support the assessment by the supervisory authority specified in Article 63(3) of the Implementing Measures;
(d) an assessment of the counterparties' willingness to pay in order to support the supervisory assessment specified in Article 63(4) of the Implementing Measures;

(e) a description of the range of circumstances in which the insurance or reinsurance undertaking might seek to call upon the item including current expectations as to when the item might be called prior to or at the point of non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement;
(f) information on any other factors relevant to the status of the counterparties to support the assessment by the supervisory authority specified in Article 63(5) of the Implementing Measures.

Where the counterparties are treated as a group of counterparties in accordance with Article 63(6) of the Implementing Measures, the information in points (a) to (f) shall be provided in respect of the group of counterparties.

Where the counterparty is a member of the same group or subgroup as the insurance or reinsurance undertaking by virtue of Article 213 of Directive 2009/138/EC and has commitments under ancillary own-fund items to different entities within the group, the information in points (b) to (f) shall evidence the ability of the counterparty to satisfy multiple calls on ancillary own-funds items at the same time, having regard to the circumstances and the entities of the group.

(4) The insurance or reinsurance undertaking shall provide information regarding the recoverability of the funds, including:

(a) details of arrangements which might enhance the recoverability of the item including the availability of collateral;
(b) details of whether national law, in any relevant jurisdiction, prevents a call being made or satisfied, including in the event of resolution, administration or insolvency proceedings being initiated in respect of the insurance or reinsurance undertaking;
(c) details of arrangements or circumstances that might prevent a call being made or satisfied in deteriorating financial conditions including non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement.

(5) The insurance or reinsurance undertaking shall provide information regarding past calls including:

(a) information on its experience of past calls or the collection of other funds due from the same or similar counterparties in the same or similar circumstances;
(b) all relevant available market data relating to past calls or the collection of other funds due from the same or similar counterparties in the same or similar circumstances;
(c) an assessment as to the relevance and reliability of the information described in points (a) and (b) as regards the expected outcome of future calls by the insurance or reinsurance undertaking.

(6) The insurance or reinsurance undertaking shall provide a description of the processes it has in place to identify any future changes, as specified in Article 62(1)(d) of the Implementing Measures, which may have the effect of reducing the loss-absorbency of the ancillary own-fund item. The description shall include at least:

(a) how it intends to identify changes to:

(i) the structure or contractual terms of the arrangement, including the cancellation or expiry of an ancillary own-fund item or the use or call up partly or wholly of an ancillary own-fund item;

(ii) the status of the counterparties concerned, including the default of a counterparty;

(iii) the recoverability of the ancillary own-fund item, including calls on other ancillary own-fund items provided by the same counterparties.

(b) how it intends to inform the supervisory authority of changes identified, including what mechanisms it has put in place to identify when the change should be escalated to the administrative, management or supervisory body of the undertaking and to the supervisory authority.

Article 5

Procedures for supervisory authorities

Supervisory authorities shall establish procedures:

(a) for the receipt and consideration of applications provided by insurance and reinsurance undertakings in accordance with the time periods set out in Article 6;

(b) to review information received from insurance and reinsurance undertakings of future changes referred to in Article 62(1)(d) of the Implementing Measures.

Article 6

Assessment of the application

(1) The supervisory authority shall confirm receipt of the application of the insurance or reinsurance undertaking.

(2) An application shall be considered complete by the supervisory authority if the application covers all the matters set out in Articles 2 to 4.

(3) The supervisory authority shall confirm if the application is considered complete or not on a timely basis and at least within 30 days of the date of receipt of the application.

(4) The supervisory authority shall ensure that the period of time within which it decides on an application:

(a) is reasonable;

(b) does not exceed three months from the receipt of a complete application unless there are exceptional circumstances which are communicated in writing to the insurance or reinsurance undertaking on a timely basis.

(5) Where there are exceptional circumstances, the supervisory authority shall not take longer than six months from the receipt of a complete application to decide on an application.

(6) Where the supervisory authority has considered an application to be complete, this shall not prevent the supervisory authority from requesting additional information necessary for its assessment. The request shall specify the additional information and the rationale for the request. The days between the date the supervisory authority requests such information and the date the supervisory authority receives such information shall not be included within the periods of time stated in paragraphs 4 and 5.

(7) The insurance or reinsurance undertaking shall inform the supervisory authority of any change to the details of its application.

(8) Where an insurance or reinsurance undertaking informs the supervisory authority of a change to its application this shall be treated as a new application unless:

(a) the change is due to a request from the supervisory authority for further information; or

(b) the supervisory authority is satisfied that the change does not significantly affect its assessment of the application.

(9) An insurance or reinsurance undertaking may withdraw an application by notification in writing at any stage prior to the decision of the supervisory authority. If the insurance or reinsurance undertaking subsequently resubmits the application or submits an updated application, the supervisory authority shall treat this as a new application.

Article 7

Communication of the supervisory authority's decision

(1) When the supervisory authority has reached a decision on an application, it shall communicate this in writing to the insurance or reinsurance undertaking, on a timely basis.

(2) Where the supervisory authority approves a lower amount than applied for by the insurance or reinsurance undertaking or rejects an application for approval, it shall state the reasons on which the decision is based.

(3) Where the supervisory approval has been granted on the condition that the contract is entered into, the insurance or reinsurance undertaking shall, without delay, enter into the contract, on the terms on which the approval was based, and provide a copy of the signed contract to the supervisory authority.

(4) The insurance or reinsurance undertaking shall not consider the ancillary own-fund item or method admissible until the contract has been entered into.

Article 8

Revision of the approved amount or withdrawal of the approval of the method

(1) The supervisory authority shall notify the insurance or reinsurance undertaking immediately if, subsequent to a decision to approve an amount or calculation method, it has reviewed that approval and decided to:

(a) reduce the amount of an ancillary own-fund item to a lower amount or to nil; or

(b) withdraw its approval of a calculation method.

(2) When notifying the insurance or reinsurance undertaking in accordance with paragraph 1 the supervisory authority shall state the reasons for their decision.

Article 9

Entry into force

(1) This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

(2) This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, […]

[For the Commission

The President]

[On behalf of the President]
[Position]

Explanatory text

Article 2

Cover letter

(1) The insurance or reinsurance undertaking shall submit a cover letter confirming that:

(a) any legal or contractual terms governing the ancillary own-fund item or any connected arrangement are unambiguous and clearly defined;
(b) the amount ascribed to the ancillary own-fund item in the application complies with Article 90(2) of Directive 2009/138/EC;
(c) the economic substance of the ancillary own-fund item, including how the item provides basic own funds once called up, has been fully reflected in the application;
(d) taking into account likely future developments as well as the circumstances at the date of the application, the insurance or reinsurance undertaking considers that the ancillary own-fund item complies with the criteria for the classification of own funds;
(e) no facts have been omitted which if known by the supervisory authority could influence its decision regarding whether to approve an ancillary own-fund item, the amount for which approval of an item shall be granted, or the time period for which approval of a calculation method shall apply.

(2) The cover letter shall also list other applications submitted by the insurance or reinsurance undertaking or currently foreseen within the next six months for approval of any items listed in Article 308a(1) of Directive 2009/138/EC, together with corresponding application dates.

(3) The cover letter shall be signed by persons authorised to sign on behalf of the administrative, management or supervisory body of the insurance or reinsurance undertaking.

The concept of economic substance as referred to in paragraph (1) point (c) requires undertakings to reflect how the ancillary own-fund item is designed to absorb losses in practice. In this respect it is important for the legal terms to be unambiguous and definite, and to consider the principle that substance prevails over form. Prudent and realistic is a concept already introduced in Article 90(2) of the Directive 2009/138/EC.

Article 4

Supporting evidence

(1) The supporting evidence shall contain sufficient information to allow the supervisory authority to assess whether the application complies with the criteria determined in Article 90 of Directive 2009/138/EC and Articles 62 to 65 of the Implementing Measures, and shall

contain at least the information described in paragraphs 2 to 6.

(2) The insurance or reinsurance undertaking shall provide information regarding the nature of the ancillary own-fund item and the loss absorbing capacity of the basic own-fund item into which the ancillary own-fund item converts on being called up, including:

(a) the item's legal or contractual terms, together with the terms of any connected arrangement and evidence that the counterparty has entered into, or will enter into, the contract and any connected arrangement;
(b) evidence that the contract and any connected arrangements are legally binding and enforceable in all relevant jurisdictions, based on a legal opinion;
(c) the period during which the contract is in effect and, if different, the period during which the insurance or reinsurance undertaking may call upon the item;
(d) confirmation that the ancillary own-fund item, once that item has been called up and paid in, would display all of the features of a basic own-fund item classified in Tier 1 in accordance with Article 71 of the Implementing Measures, or all of the features of a basic own-fund item classified in Tier 2 in accordance with Article 73 of the Implementing Measures;
(e) confirmation that the item's contractual terms do not contain any provision which might create a disincentive for the insurance or reinsurance undertaking to call upon the item to absorb losses or place any constraint upon its ability to be callable on demand;
(f) confirmation that the ancillary own-fund item or its benefits would only be available to the insurance or reinsurance undertaking and would not be transferrable or assignable to any other party, or be able to be encumbered in any other way;
(g) any factors which restrict the conditions under which the insurance or reinsurance undertaking might seek to call upon the item, including but not limited to conditions of stress specific to the insurance and reinsurance undertaking or wider market stress;
(h) whether the insurance or reinsurance undertaking has, or in the future may have, any obligation to, or any expectation or understanding that it will pay funds or provide any other benefit to the counterparty or to a third party in connection with the item, other than in the event of repayment of a basic own-fund item which would satisfy the features in Article 71(1)(h), and Article 73(1)(d) of the Implementing Measures;
(i) a copy of the medium term capital management plan including how the item will contribute to the insurance or reinsurance undertaking's existing capital structure, and how the item might enable the insurance or reinsurance undertaking to meet its existing or future capital requirements.

(3) Except where Article 63(6) of the Implementing Measures applies and the status of a group of counterparties may be assessed as though it were a single counterparty, the insurance or reinsurance undertaking shall provide information regarding the status of each counterparty including:

(a) the names and a description of each counterparty, including the nature of any relationship between the insurance or reinsurance undertaking and the counterparty;
(b) an assessment of the risk of default of the counterparties in order to support the assessment by the supervisory authority specified in Article 63(2) of the Implementing Measures;
(c) an assessment of the liquidity position of the counterparties in order to support the assessment by the supervisory authority specified in Article 63(3) of the Implementing

Measures;

(d) an assessment of the counterparties' willingness to pay in order to support the supervisory assessment specified in Article 63(4) of the Implementing Measures;

(e) a description of the range of circumstances in which the insurance or reinsurance undertaking might seek to call upon the item including current expectations as to when the item might be called prior to or at the point of non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement;

(f) information on any other factors relevant to the status of the counterparties to support the assessment by the supervisory authority specified in Article 63(5) of the Implementing Measures.

Where the counterparties are treated as a group of counterparties in accordance with Article 63(6) of the Implementing Measures, the information in points (a) to (f) shall be provided in respect of the group of counterparties.

Where the counterparty is a member of the same group or subgroup as the insurance or reinsurance undertaking by virtue of Article 213 of Directive 2009/138/EC and has commitments under ancillary own-fund items to different entities within the group, the information in points (b) to (f) shall evidence the ability of the counterparty to satisfy multiple calls on ancillary own-funds items at the same time, having regard to the circumstances and the entities of the group.

(4) The insurance or reinsurance undertaking shall provide information regarding the recoverability of the funds, including:

(a) details of arrangements which might enhance the recoverability of the item including the availability of collateral;

(b) details of whether national law, in any relevant jurisdiction, prevents a call being made or satisfied, including in the event of resolution, administration or insolvency proceedings being initiated in respect of the insurance or reinsurance undertaking;

(c) details of arrangements or circumstances that might prevent a call being made or satisfied in deteriorating financial conditions including non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement.

(5) The insurance or reinsurance undertaking shall provide information regarding past calls including:

(a) information on its experience of past calls or the collection of other funds due from the same or similar counterparties in the same or similar circumstances;

(b) all relevant available market data relating to past calls or the collection of other funds due from the same or similar counterparties in the same or similar circumstances;

(c) an assessment as to the relevance and reliability of the information described in points (a) and (b) as regards the expected outcome of future calls by the insurance or reinsurance undertaking.

(6) The insurance or reinsurance undertaking shall provide a description of the processes it has in place to identify any future changes, as specified in Article 62(1)(d) of the Implementing Measures, which may have the effect of reducing the loss-absorbency of the ancillary own-fund item. The description shall include at least:

(a) how it intends to identify changes to:

(i) the structure or contractual terms of the arrangement, including the cancellation or expiry of an ancillary own-fund item or the use or call up partly or wholly of an ancillary own-fund item;

(ii) the status of the counterparties concerned, including the default of a counterparty;

(iii) the recoverability of the ancillary own-fund item, including calls on other ancillary own-fund items provided by the same counterparties.

(b) how it intends to inform the supervisory authority of changes identified, including what mechanisms it has put in place to identify when the change should be escalated to the administrative, management or supervisory body of the undertaking and to the supervisory authority.

Paragraph 2 point (e) prohibits any provision in the contractual or legal terms governing the ancillary own-fund item or in any connected arrangement which creates a disincentive or places a constraint as described in this paragraph.

By contrast, paragraph 2 point (g) refers to external factors which are not the subject of the legal terms or any connected arrangement. The description of any such factors does not necessarily mean that the application would be rejected, but may, for instance, lead to the approval of a lower amount.

Paragraph 2 point (f) requires a confirmation that the ancillary own-fund item is not, and could not be, encumbered in any way, either at the point of approval or in the future.

Article 6

Assessment of the application

(1) The supervisory authority shall confirm receipt of the application of the insurance or reinsurance undertaking.

(2) An application shall be considered complete by the supervisory authority if the application covers all the matters set out in Articles 2 to 4.

(3) The supervisory authority shall confirm if the application is considered complete or not on a timely basis and at least within 30 days of the date of receipt of the application.

(4) The supervisory authority shall ensure that the period of time within which it decides on an application:

(a) is reasonable;

(b) does not exceed three months from the receipt of a complete application unless there are exceptional circumstances which are communicated in writing to the insurance or reinsurance undertaking on a timely basis.

(5) Where there are exceptional circumstances, the supervisory authority shall not take longer than six months from the receipt of a complete application to decide on an application.

(6) Where the supervisory authority has considered an application to be complete, this shall not prevent the supervisory authority from requesting additional information necessary for its assessment. The request shall specify the additional information and the rationale for the request. The days between the date the supervisory authority requests such information and the date the supervisory authority receives such information shall not be included within the periods of time stated in paragraphs 4 and 5.

(7) The insurance or reinsurance undertaking shall inform the supervisory authority of any change to the details of its application.

(8) Where an insurance or reinsurance undertaking informs the supervisory authority of a change to its application this shall be treated as a new application unless:

(a) the change is due to a request from the supervisory authority for further information; or

(b) the supervisory authority is satisfied that the change does not significantly affect its assessment of the application.

(9) An insurance or reinsurance undertaking may withdraw an application by notification in writing at any stage prior to the decision of the supervisory authority. If the insurance or reinsurance undertaking subsequently resubmits the application or submits an updated application, the supervisory authority shall treat this as a new application.

The time periods described in Article 6 may be illustrated by the following two examples:

Example 1: Start of the time period

Day 1	An insurance or reinsurance undertaking submits an application to a supervisory authority.
Day 31	The insurance or reinsurance undertaking contacts the supervisory authority. It has not yet received confirmation of receipt or whether the application is complete, despite the 30 day period having elapsed.
Day 32	The supervisory authority and the insurance or reinsurance undertaking resolve the issue of why notification was not received. For example, the application may have failed to arrive at the supervisory authority or the supervisory authority's confirmation may have been sent but not received by the insurance or reinsurance undertaking.
	The facts of the case will determine whether or not the period of time for the supervisory authority to decide on the application has started. For example, if the insurance or reinsurance undertaking did not receive the confirmation sent by the supervisory authority that the application was complete this will not affect the period of time within which the supervisory authority is working. However, if the application went astray and did not reach the supervisory authority then the process would need to restart.

Example 2: Interruption of the time period

Day 1	An insurance or reinsurance undertaking submits an application to a supervisory authority.
Day 2	The supervisory authority confirms receipt of the application
Day 4	The supervisory authority reviews the application to assess whether it is complete

	and considers that it is complete.
Day 5	The supervisory authority notifies the insurance or reinsurance undertaking that the application is considered complete. The period of time for the supervisory authority to decide on the application runs from Day 1. (If the application was incomplete, the period would not have commenced. The supervisory authority would inform the insurance or reinsurance undertaking of this fact instead.)
Day 27	The supervisory authority reviews the substance of the application and requests further details from the insurance or reinsurance undertaking regarding a particular aspect of the application. The time period is suspended.
Day 30	The insurance or reinsurance undertaking provides the further details requested by the supervisory authority. The supervisory authority confirms that its request has been adequately addressed. The time period resumes.