

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

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

Name of Company:	Insurance Europe	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-14-008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering refers to Consultation Paper on the proposal for implementing technical standards on special purpose vehicles.</p>		
Reference	Comment	
General Comment	<p>Insurance Europe welcomes the opportunity to comment on this consultation Paper on the Implementing Technical Standards on Special Purpose Vehicles (SPV).</p> <p>It is important to note that, bearing in mind that the draft Delegated Acts are not finalised yet, these comments are provided with a caveat that they could change depending on the final Delegated Acts.</p> <p>The issues related to this paper and which are of great concern for us are as follows:</p> <p>Lack of approval or a clear process defining the way forward if no response</p>	

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from supervisor 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 SPV 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 as this will discourage undertakings to take this route.

Insufficient alignment between the terms used in the ITS and the terms used in the Directive and the Delegated Acts when referring to special purpose vehicles. Indeed, this will ease the readability of the Solvency II framework and ensure consistent understanding of the ITS.

The use of terms such as investors vs. sponsors vs. originators is a suitable example. The term investor is mentioned once in the ITS and then again in the annex 1 on page 15. However, sponsors and originators are not mentioned in neither the Solvency II Directive, the Delegated Acts nor the ITS itself. The first time sponsors and originators are mentioned is in annex 1 on page 15. Hence, terms used but not defined should be explained to ensure both a common understanding but also for readers to understand clearly which roles sponsors/originators/investors are referring to in the context of the establishment of an SPV.

Insufficient guidance in this ITS to account for interdependencies regarding the use of an SPV in the internal model when an application for the SPV is currently being processed.

Particularly, The timeline for the approval process regarding the use of an internal model needs to give due consideration to the timeline regarding the approval of the use of an SPV, the risk being that the SPV is outdated for being used in the internal model by the time the approval is granted for the use of the SPV. In turn, this might even potentially cause the rejection of the application for the use of an internal model. Furthermore, when an undertaking or group is applying for an internal model and that undertaking or group is also applying for an SPV there are two parallel processes ongoing. The timeline for these two processes needs to be

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	<p>aligned as to ensure that the approval process for an Internal Model do not exceed the usability of the SPV since Article 7 of the ITS sets out that NCA may withdraw the authorisation of the SPV if it ceases to pursue business for more than six months. The relationship between SPVs and internal models needs to be further clarified in the ITS.</p> <p>Lack of consistency across all the different ITS on approval processes. The paper remains silent as to what timeline is allotted to the supervisor for notifying that the application is complete. This is inconsistent with the other approval processes in the other ITS (MA, USP, Internal model, AOF) which feature such a provision. In line with the ITS 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.</p>	
Q1		
Q2		
Recital (1)		
Recital (2)		
Recital (3)		
Recital (4)		
Recital (5)		
Recital (6)	It is appreciated that all ITSs are included in one comprehensive ITS. This ensures better coherence between and overview of the requirements.	
Recital (7)		
Recital (8)		
Article 1	Article 1 mentions that the scope of this ITS contains the procedure to be followed when both granting and withdrawing authorisation for an SPV. However, there is no	

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	legal basis in the Directive nor the DAs for this ITS to determine how to withdraw the authorisation of an SPV. The withdrawal should be deleted from this Article. The same applies to Article 7.	
Article 2		
Article 3		
Article 4	<p>The approval process remains silent as to what happens when the timeline for approval has elapsed. In such a case, the company should be allowed to consider the use of the SPV as approved as there is no justification to leave an undertaking in a situation of uncertainty. The approval process should be clearly defined and certainly not be perceived as a possible never ending process. We note in this regard that the paper remains silent as to what timeline is allotted to the supervisor for notifying that the application is complete. This is inconsistent with the other papers on ITS (MA, USP, Internal model, AOF) which feature such a provision.</p> <p>Additionally, this is not in line with the Directive nor is it in line with the risk-based approach. The longer the final approval is extended the bigger the risk of having a significant deviation from the undertakings risk profile.</p>	
Article 5		
Article 6	<p>This Article is not in line with Article 318 SPV10 (5) of the DA.</p> <p>Article 318 SPV10 (5) explicitly sets out the responsibility of the SPV to inform their supervisors about any change that could affect compliance with the fully funded-requirement (no matter whether or when the corresponding change could end up in a non-compliance situation). Article 6 (1) requires the SPV to reveal a critical situation only if non-compliance already has materialized or is likely to do so within three months. Clarification is needed.</p>	
Article 7	<p>Should the supervisor revoke the approval given for using an SPV, the undertaking needs to be informed in writing with a document that explains the rationale behind this decision. This document shall be sent by the supervisor no later than the date where the approval is revoked. The supervisor shall inform the undertaking of its intention to revoke the approval early enough in advance to allow the undertaking to take remedial action or to envisage other options to manage efficiently the risks that</p>	

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	<p>have been transferred to the SPV.</p> <p>In any case, interdependencies with the use of an internal model shall be considered by the supervisor when deciding to revoke the approval to use an SPV. Further information shall be provided in this ITS to provide clarity on the impact that this revocation can have on the approval to use an internal model so as to avoid undertakings to have an internal model that is not compliant with the requirements as stated in the Solvency II Directive.</p> <p>Article 7 sets out the procedure to be followed when withdrawing authorisation of an SPV. However, there is no legal basis in the Directive nor the DA for this ITS to determine how to withdraw the authorisation of an SPV. This Article should be deleted from this ITS. Please see comment to Article 1.</p>	
Article 8	<p>Article 8(1) states that <i>'[...] multi-arrangement SPV shall demonstrate to the satisfaction of its supervisory authority that its solvency cannot be adversely affected by the winding-up proceedings of any one of those insurance or reinsurance undertakings [...]'</i>. It is not clear how this demand should or could be met in practice. As such, it would become impossible to get approval for multi-arrangement SPV's. Clarification is needed.</p> <p>Art 8 (2) suggests that SPVs cannot be used to achieve diversification benefits, while diversification is at the core of insurance and reinsurance. Is this really intended? Clarification is needed.</p>	
Article 9		
Article 10		
Article 11		
Article 12		
Article 13	<p>The second part of Article 13(1) states that in case of multi-arrangement SPV's, the responsible NCA for the SPV <i>may</i> only share the annual report from the SPV with the</p>	

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	relevant undertakings established in the same Member State as the SPV. This "may" clause seems very limiting and do not foster good communication nor transparency for sponsors participating in the SPV which are not situated in the same Member State as the SPV. We find it difficult to see, where such limitations to information are justified.	
Article 14	When data is mentioned, it should be specified what is the period of reference that should be considered for providing these data (e.g. balance sheet of year N, risks transferred to the SPV as from X, etc.). Further clarity on this is welcomed to avoid misunderstanding, for instance by referring to the "reporting period" (as mentioned in Article15 (1)(f)).	
Article 15		
Article 16		
Article 17	<p>Article 17(1)(b) refers to types of tiers of financing mechanism, specifying the tranches and tiers. However, tranches are not defined in the Solvency II Directive nor in the ITS and tiers are only mentioned in relation to Own Funds in the Solvency II Directive. Clarification on these terms is needed to avoid misunderstanding.</p> <p>Additionally, it should be acknowledged that some undertakings are using credit ratings that do not come from external credit ratings agencies. These ratings can be defined internally depending on the resources available within undertakings' organisations. Therefore, flexibility should be provided to undertakings (e.g. bank insurers) when credit ratings are defined internally and when undertakings can demonstrate that the rating has been done accurately according to professional standards and best practices.</p>	
Article 18	The timeline to submit reporting quantitative and qualitative information should be specified further, as well as the frequency should part of the information is required in advance of the yearly reporting.	
Article 19		
Article 20		

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Annex I	<p>Paragraph 2 sets out information needed for documentation purposes, stating where the originator or sponsor of the SPV differs from the (re)insurance undertaking transferring risks this should be stated. However, it is not evident how the originator or sponsor can differ from the (re)insurance undertaking, since this setup has not been mentioned throughout the ITS. Clarification is needed.</p> <p>It also seems that an SPV should always have a rating according to Annex 1, paragraph 12 (b). However, there is no such requirement in the Directive or in the DAs. Clarification needed.</p>	
Annex II : SPV.01.01	It seems a bit strange to present the reporting templates first, and then the explanations (logs) in annex III. It might be worth swop around annex II and Annex III to ease the readability.	
Annex II : SPV.01.02		
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Annex II : SPV.03.02		
Annex III : SPV.01.01		
Annex III : SPV.01.02		
Annex III : SPV.02.01		
Annex III : SPV.02.02		
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Annex III : SPV.03.02		
Explanatory text		
4.1		
4.2	It should be ensured that the approval process is not reset if further documentation is	

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	requested from the NCA, otherwise the approval process can be never-ending. We are of the view that the decision for a suspension of the six months approval period should be left up to the insurance or reinsurance undertaking.	
4.3		
4.4		
4.5		
4.6		
4.7		
4.8		
4.9	Third sentence of this paragraph is a repetition of the third paragraph in paragraph 4.9. Clarification on the difference between 4.9 and 4.10 is needed.	
4.10	Third sentence of this paragraph is a repetition of the third paragraph in paragraph 4.9. Clarification on the difference between 4.9 and 4.10 is needed.	
4.11		
4.12		
4.13		
4.14		
4.15		
4.16		
4.17		
4.18		
4.19		
4.20	Clarification on what Implementing Measures refers to is needed. Should it be updated to Delegated Acts?	

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4.21		
4.22		
Annex 1 : Impact Assessment	The impact assessments seems very shallow and do not propose any policy options discussed nor a justification of e.g. the amount of documentation needed for approval as set out in annex I. The impact assessment is a mere summary of the ITS itself.	
Baseline		
Policy analysis	What are the costs and benefits?	
Proportionality considerations		