

**Final report on public consultation No.
14/053 on the implementing
technical standards with regard to
capital add-ons**

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1. Executive summary

Introduction

In accordance with Article 15 of Regulation (EU) No 1094/2010 (EIOPA Regulation), EIOPA may develop implementing technical standards (ITS) 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 ITS 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.

In accordance with paragraph 8 of Article 37 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), EIOPA shall develop implementing technical standards with regard to capital add-ons.

As a result of the above, on 2 December 2014, EIOPA launched a public consultation on the draft implementing technical standards with regard to capital add-ons.

The Consultation Paper is also published on EIOPA's website¹.

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/053) and the full package of the public consultation, including:

Annex I: Implementing Technical Standard

Annex II: Impact Assessment

Annex III: Resolution of comments

¹ [Consultation Paper](#)

Next steps

According to Article 15 of EIOPA Regulation, the draft ITS in Annex I will be submitted to the European Commission for endorsement by 30 June 2015.

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 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 III.

General comments

Timeframes

Most of stakeholders' concerns regard what was perceived as a lack of harmonization of timeframes. The timeframe issues raised concern the four different following aspects:

2.1. Timeframe for responding to the notification before setting a capital add-on

- a. Stakeholders asked for Article 1(3) of the draft ITS to be deleted arguing that undertakings should always have the possibility to respond to a supervisory intention to set a capital add-on and that allowing supervisory authorities to set a capital add-on without any notification could lead to arbitrary decisions.
- b. EIOPA acknowledges the concerns of stakeholders and has deleted Article 1(3) in order to ensure that undertakings are provided with an opportunity to respond when the supervisory authority has concluded that it is appropriate to set a capital add-on. A supervisory authority is required to justify not only the reasons for a certain decision but also to consider any arguments against that decision to set a capital add-on. Therefore, not providing undertakings with the opportunity to respond before a final decision about a capital add-on is taken would carry the risk of arbitrary decisions that are of concern to stakeholders. Granting undertakings the opportunity to comment on the supervisory authority's intention to set a capital add on gives better assurance that no counter arguments are being overlooked and thus reduces the risk that a supervisory authority sets a capital add-on that is not justified or for which the amount is not justified.

Nevertheless, deleting Article 1(3) does not rule out that the situation may be so urgent that the timeframe granted for comments has to be very short in order to protect the interests of policyholders.

2.2. Minimum timeframe for response to the notification before setting a capital add-on

- a. Several stakeholders suggested that there should be no national discretion concerning timeframes for a response where undertakings are being notified of an intention of the supervisory authority to set a capital add-on, with some proposing that a minimum timeframe should be prescribed. The proposal for this minimum timeframe was that it should

be one month. The lack of a prescribed timeframe for a response by the undertaking was seen as especially problematic with regard to comparable undertakings within the same group being given different response timeframes.

- b. Article 1 of the ITS does not include a specific timeframe because the timeframe appropriate for a response to any intended decision by a supervisory authority can only be determined on a case-by-case basis. A harmonized or minimum timeframe for a response would not allow for case-by-case analysis and application. In particular, a minimum timeframe may slow down the process of setting a capital add-on in cases where urgent action is required and therefore only a very short timeframe for responding is appropriate.

2.3. Minimum timeframe for the information request

- a. Concerning the timeframes for information requests by the supervisory authority stakeholders stated that the time allowed for feedback from undertakings should be adequate and usually not less than a month. The requirement to set an adequate timeframe for answering an information request should be specified and the supervisory authority should be obliged to take into account the extent and complexity of the requested information, its importance for the decision, the severity of the deficiencies and the urgency of the proceeding of setting a capital add-on.
- b. EIOPA also considers it imperative that timeframes for the provision of information are taken on a case-by-case basis with no minimum timeframe for feedback being set out. Capital add-ons only apply in specific situations. In these situations it is generally important that the supervisory authority should react promptly. As a consequence, a timeframe of one month for providing information could be excessive in some cases.

2.4. Appropriate timeframe for complying with the capital add-on

- a. Finally, stakeholders felt that the ITS should introduce a requirement for supervisory authorities to consider a reasonable timeframe when deciding on the date from which the capital add-on is applicable in order to give undertakings sufficient time to proceed with measures to comply with the capital add-on.
- b. Capital add-ons enter into force immediately after the notification of the decision by the supervisory authority to the undertaking to set a capital add-on. The notification of the intention to set a capital add-on was given previously; from this point onwards the undertaking should start preparing and should start to plan for this possibility. The effectiveness of the measure would be undone if its implementation would be delayed unduly after the decision of the supervisory authority to set the capital add-on. The supervisor and undertaking, again on a case-by-case basis will cooperate on the steps that need to be taken, already during the period before the setting of the capital-add on.

2.5. Co-operation with the supervisory authority

- a. Some stakeholders objected to the requirement for undertakings to provide "any relevant information" to supervisory authorities on request, arguing that the information requirements should be confined to information necessary for supervisory decisions to set, calculate or

remove a capital add-on. They are worried that the use of the word “any” could result in excessive information requirements and therefore asked for this word to be deleted. One stakeholder even maintained that the scope of Article 2 went beyond what is required and necessary according to Directive 2009/138/EC and Commission Delegated Regulation (EU) 2015/35. The stakeholder pointed out that Article 35 of that Directive - which is dealing with information to be provided to supervisory authorities - is addressed to Member States. This was taken to mean that the information request in Article 2 cannot be derived from Article 35 of that Directive.

- b. The wording of Article 2 should not lead to excessive information requests. “Any relevant information” in the draft ITS for consultation meant any information relevant in the given context; in the context of the ITS, it denotes information that is relevant in connection with setting, removing or calculating a capital add-on. Consequently, information requests are confined to information necessary for supervisory authorities to take a decision to set, calculate or remove a capital add-on.

Cooperating with the supervisory authority will enable the undertaking to report the most relevant data leading to an appropriate level of capital add-on being set.

The obligation on Member States to require that undertakings submit information to the supervisory authority under Article 35 of Directive 2009/138/EC relates to information necessary for the supervisory authority to perform its tasks. This Article therefore ensures that supervisory authorities under national law have the power to request information as set out in Article 2 of the ITS.

However, EIOPA has redrafted Article 2 which now concentrates on the calculation of the capital add-on. The obligation for undertakings to cooperate with the relevant supervisory authority is a general supervisory requirement which does not explicitly need to be stated in the procedures for decisions to set, calculate and remove capital add-ons.

2.6. Board of Appeal

- a. Stakeholders requested that supervisors should establish a board of appeal for undertakings at national level, where a process of appeal does not currently exist. The aim of this board is to give undertakings the opportunity to dispute decisions taken by supervisors on capital add-on amounts, notification periods, timeframes, communication, and decisions to change or sustain a capital add-on. Stakeholders are of the opinion that this is especially important where supervisors take decisions without reaching an agreement with the undertaking first.
- b. Setting a capital add-on should be viewed as part of the supervisory process and therefore does not require a separate or specific layer of appeal at national level any different from the normal appeal process applicable to supervisory decisions. EIOPA abstains from introducing an additional article in this ITS on this aspect.

2.7. Capital add-on as measure of last resort

- a. Stakeholders argued that the ITS should make clear that a capital add-on is a last resort supervisory measure as set out in Recital 27 and Article 37 of Directive 2009/38/EC.
- b. EIOPA acknowledges that the capital add-on should only be set in exceptional circumstances as a measure of last resort. However, as it is already clearly stated in the Directive EIOPA does not need to and, due to legal drafting limits, is not allowed to repeat this aspect in the ITS.

General nature of participants to the public consultation

EIOPA received comments from the IRSG and nine responses from other stakeholders to the public consultation. All non-confidential comments received have been published on EIOPA's website.

Respondents can be classified into four main categories: European trade, insurance, or actuarial associations; national insurance or actuarial associations; (re)insurance groups or undertakings; and other parties such as consultants and lawyers.

IRSG opinion

The particular comments from the IRSG on the ITS at hand can be consulted on EIOPA's website².

Comments on the Impact Assessment

Three comments were received from stakeholders with respect to the Impact Assessment, two of them agreeing with the preferred policy options identified by EIOPA. The third comment was related to the need for monitoring of the supervisory practices on capital add-ons. However, neither the ITS nor the Impact Assessment specifically covers this issue since Article 52 of Directive 2009/38/EC already provides for the monitoring of supervisory practices on capital add-ons: supervisory authorities will annually report on the capital add-ons they have set and on the average amounts of the capital add-ons to EIOPA and EIOPA will report to the European Parliament, the Council and the EU Commission. Therefore, only minor revisions have been made to the Impact Assessment to align it with the drafting changes in the ITS.

² [IRSG opinion](#)

3. Annexes

Annex I: Implementing Technical Standard



Brussels, XXX
[...] (2015) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

of XXX

on [...]

COMMISSION IMPLEMENTING REGULATION (EU) .../..

of xxx

laying down implementing technical standards with regard to the procedures for decisions to set, calculate and remove capital add-ons in accordance with Directive 2009/138/EC of the European Parliament and of the Council

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)³, and in particular the third subparagraph of Article 37(8) thereof,

Whereas:

- (1) Directive 2009/138/EC provides for a possibility for the supervisory authorities to set a capital add on for an insurance or reinsurance undertaking. It is necessary to provide for procedures for decisions to set, calculate and remove capital add-ons.
- (2) In order to enable the insurance or reinsurance undertaking to provide information and justifications which may mitigate or challenge the need for a capital add-on before taking a decision on setting the capital add-on, the supervisory authority should give the insurance or reinsurance undertaking the possibility to provide reasons against setting a capital add-on.
- (3) The co-operation of the insurance or reinsurance undertaking with the supervisory authority is essential in view of ensuring the effectiveness of the capital add-on as a supervisory measure. In order to enable the supervisory authority to base the capital add-on on accurate and up to date information, the insurance or reinsurance undertaking should calculate the capital add-on at the request of the supervisory authority.
- (4) In order to enable the insurance or reinsurance undertaking to remedy the deficiencies that led to the imposition of the capital add-on it is necessary to specify the content of the decision to set a capital add-on.
- (5) The supervisory authority and the insurance or reinsurance undertaking should not rely only on the annual review of the capital add-on, but should proactively monitor the circumstances which led to the setting of the capital add-on in order to take appropriate measures. To this end, the insurance or reinsurance undertaking should therefore provide the supervisory authority with progress reports on remedying the deficiencies that led to the imposition of the capital add-on. It is also necessary to provide for a procedure to review decisions on

³ OJ L 335, 17.12.2009, p.1.

capital add-on if there is a material change in the circumstances that led to the setting of the capital add-on.

- (6) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (7) 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 of the European Parliament and of the Council⁴.

HAS ADOPTED THIS REGULATION:

⁴ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

Article 1

Notification before setting a capital add-on

1. The supervisory authority shall notify the insurance or reinsurance undertaking concerned of its intention to set a capital add-on and the reasons for setting the capital add-on.
2. The supervisory authority shall set a deadline by which the insurance or reinsurance undertaking is to respond to the notification referred to in paragraph 1. The supervisory authority shall consider any information provided by the insurance or reinsurance undertaking before taking its decision.

Article 2

Calculation of capital add-on

If required by the supervisory authority, the insurance or reinsurance undertaking shall perform the calculation of the capital add-on in accordance with the specifications set by the supervisory authority.

Article 3

Provision of information

1. The supervisory authority may request the insurance or reinsurance undertaking to provide information necessary for taking a decision on setting a capital add-on by a deadline set by the supervisory authority.
2. When determining the deadline referred to in paragraph 1, the supervisory authority shall pay particular attention to the likelihood and severity of any adverse impact on policyholders and beneficiaries.
3. The insurance or reinsurance undertaking shall immediately notify the supervisory authority if it cannot meet the deadline referred to in paragraph 1.

Article 4

Decision to set a capital add-on

1. The supervisory authority shall notify in writing its decision to set a capital add-on to the insurance or reinsurance undertaking.
2. The decision of the supervisory authority shall be sufficiently detailed to enable the insurance or reinsurance undertaking to understand what measures it needs to take or what deficiencies it needs to remedy in order to have the capital add-on removed.
3. The decision referred to in paragraph 2 shall include:
 - (a) the reasons for setting the capital add-on;
 - (b) the methodology for calculating the capital add-on and the amount of the capital

add-on;

- (c) the date from which the capital add-on is applicable;
- (d) where relevant, the deadline by which the insurance or reinsurance undertaking is to remedy the deficiencies that led to setting the capital add-on;
- (e) where relevant, the content and frequency of any progress report to be provided in accordance with Article 5.

Article 5

Progress report

In the cases set out in Article 37(1)(b) and (c) of Directive 2009/138/EC and if requested by the supervisory authority, the insurance or reinsurance undertaking shall inform the supervisory authority about the progress it has made in remedying the deficiencies that led to the setting of the capital add-on and what relevant actions it has taken.

Article 6

Review of the capital add-on

1. The supervisory authority shall review the imposed capital add-on if there is a material change in the circumstances that led to the setting of the capital add-on.
2. Following the review of the imposed capital add-on the supervisory authority shall maintain, change or remove the capital add-on.

Article 7

Maintaining, changing or removing the capital add-on

When considering whether to maintain, change or remove the capital add-on the supervisory authority shall take into account any of the following:

- (a) information submitted by the insurance or reinsurance undertaking during the process of setting and calculating the capital add-on;
- (b) information obtained by the supervisory authority through the supervisory review process and through any subsequent supervisory activity;
- (c) information provided in the progress report if requested by the supervisory authority in accordance with Article 5;
- (d) any other relevant information indicating a material change in the circumstances that led to the setting of the capital add-on.

Article 8

Decision to change or remove the capital add-on

1. The supervisory authority shall notify in writing without delay its decision to change or remove the capital add-on and the effective date of that decision to the insurance or

reinsurance undertaking.

2. Where the supervisory authority decides to change the capital add-on, it shall adopt a new decision in accordance with Article 4(2) and (3).

Article 9

Entry into force

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

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

Done at Brussels, []

*[For the Commission
The President]*

*[For the Commission
On behalf of the President]*

[Position]

Annex II: Impact Assessment

Section 1: Procedural issues and consultation of interested parties

- 2.1. In accordance with Article 37 (6) of the Solvency II Directive, "EIOPA shall develop draft implementing technical standards on the procedures to be followed for decisions to set, calculate and remove capital add-ons" (hereinafter CAO).
- 2.2. Article 15 of Regulation (EU) No 1094/2010 (EIOPA Regulation) states that the potential related costs and benefits of the Implementing Technical Standards (hereinafter ITS) should be conducted, unless such analyses are disproportionate in relation to the scope and impact of the draft ITS concerned or in relation to the particular urgency of the matter. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.
- 2.3. This Impact Assessment covers only those areas of discretion that were exercised when developing the ITS on capital add-ons, to ensure that supervisory authorities implement clear, transparent and harmonized procedures for setting, calculating and removing capital add-ons.
- 2.4. The impact assessment was prepared during the drafting of the ITS. Experts on CAO and system of governance from national competent authorities provided input into the drafting and these responses have been used to inform the impact assessment.
- 2.5. The draft ITS and its Impact Assessment were subject to public consultation between 3 December 2014 and 2 March 2015. The comments received from the stakeholders were duly taken into account and served as a valuable input in order to improve the draft technical standards.
- 2.6. The comments received and EIOPA's responses to them are summarised in the section Feedback Statement of the Final Report.

Section 2: Problem Definition

- 2.7. Following the supervisory review process, the Solvency II Directive states that the supervisory authorities have the power to impose a capital add-on to the Solvency Capital Requirement (SCR) applicable to insurance and reinsurance undertakings. The imposition of a capital add-on should only be adopted under exceptional circumstances, in the cases listed in Article 37 of the Directive.
- 2.8. As regards to procedures to be followed by supervisory authorities in exercising such power, the requirements set out in Article 37 of the Directive are high-level and therefore allow for substantial variation in practice regarding the setting, calculating and removing of CAO. The ITS should facilitate convergence of the regulatory procedures whereby supervisory authorities consider the specific circumstances pertaining to a given insurance or reinsurance undertaking and any potential CAO.
- 2.9. A description of the procedures to be followed is deemed necessary addressing in particular the following issues:

- Prior notification by the supervisory authorities to the undertakings of their intention to impose a CAO;
- Time period for provision of requested information by the undertaking to the supervisory authority.

Baseline

- 2.10. When analysing the impact from policies, the 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 or supervisory intervention.
- 2.11. The baseline is based on the current situation of EU insurance and reinsurance markets, taking account of the progress towards the implementation of the Solvency II framework achieved at this stage by insurance and reinsurance undertakings and supervisory authorities.
- 2.12. In particular the baseline will include:
- The content of Directive 2009/138/EC as amended by Directive 2014/51/EU;
 - The Commission Delegated Regulation 2015/35.

Section 3: Objectives pursued

- 2.13. Objective 1: To ensure a consistent approach to the procedures for setting, calculating and removing capital add-ons – consistency in application is essential if the goals of policyholder protection and level playing field are to be promoted.
- 2.14. Objective 2: To ensure clear communication between the supervisory authority and undertakings throughout the procedure of setting, calculating and removing capital add-ons.
- 2.15. These policy objectives correspond to the following specific and general objectives for the Solvency II Directive:
- General objectives
 - enhanced policyholder protection.
 - Specific objectives
 - advanced supervisory convergence and cooperation;
 - increased transparency;
 - improved risk management of EU undertakings.
 - Operational objectives
 - harmonised supervisory methods, powers and reporting.

- 2.16. A CAO is a supervisory measure intended to help to ensure regulatory capital establishes an appropriate degree of protection for policyholders. Undertakings with levels of risk that are not adequately reflected in the assumptions underlying the calculation of their SCR may thus be required to hold higher levels of capital to guard against the risks. As CAO will be publicly disclosed, they also serve as a signal to the market regarding an undertaking's risks, further improving market transparency and discipline. This may stimulate improvements in risk management, as well as the better alignment of the SCR with the undertaking's risk profile.

Section 4: Policy options

Policy Issue 1 - Prior notification by the supervisory authorities to the undertakings of their intention to impose a CAO

- 2.17. Whether to give the supervisory authority an option not to provide advanced notice to an undertaking of its intention to impose a CAO, depending on the circumstances, is an important policy choice. If the supervisory authority chose not to disclose its intention to impose a CAO, an undertaking may be put in a disadvantaged position as it would not be able to provide information and justifications which mitigate or negate the need for a CAO.
- 2.18. Conversely, if the supervisory authority always had to notify the undertaking before imposing a CAO, and should immediate additional capital be needed, then policyholders and beneficiaries may be adversely impacted by the delay.
- 2.19. **Option 1.1:** To give the supervisory authority the option whether or not to notify the undertaking of its intention to set a CAO, in certain specified circumstances.
- 2.20. **Option 1.2:** To make it obligatory for the supervisory authority to notify the undertaking of its intention to impose a CAO irrespective of the circumstances.

Policy Issue 2 – Time period for provision of requested information by the undertaking to the supervisory authority

- 2.21. Undertakings should fully co-operate with supervisory authorities throughout the procedure of setting, calculating and removing capital add-ons. According to Article 35 of the Directive Member States shall require undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision, including the ability to assess the risks faced by that undertaking.
- 2.22. However, it is unclear whether the ITS should confer upon the supervisory authority the ability to set a timeframe within which this information shall be delivered within a case-specific timeframe determinable by the supervisory authority or whether time limits should be pre-defined. By prescribing the timescales for cooperation, undertakings will be more certain of what is expected of them. However, it would be difficult to define in advance what may be a reasonable timescale in a variety of circumstances.

- 2.23. **Option 2.1:** The ITS should confer upon the supervisory authority, the ability to define the timeframe which the undertaking should be given to meet any information request.
- 2.24. **Option 2.2:** The ITS should pre-define the timeframes which the undertaking should be given to meet any information request.

Section 5: Analysis of impacts

Policy Issue 1 - Prior notification by the supervisory authorities to the undertakings of their intention to impose a CAO

Option 1.1: To give the supervisory authority the choice whether or not to notify the undertaking of its intention to set a CAO, in certain specified circumstances.

2.25. Benefits

- Provides the supervisory authority with flexibility and the ability to act quickly if necessary;
- Ensures that the interests of policyholders and beneficiaries are not adversely affected by delays in imposing a CAO.

2.26. Costs

- No costs identified for EIOPA or policyholders. Potential significant cost for undertaking, where the undertaking cannot provide additional information that could mitigate or negate the need for a CAO;
- Not being forewarned of an impending CAO could make it more difficult for the undertaking concerned to raise additional capital where this is necessary on account of the CAO before the CAO becomes common knowledge;
- Possible divergence of application across Member States.

Option 1.2: To make it obligatory for the supervisory authority to notify the undertaking of its intention to impose a CAO under any circumstances.

2.27. Benefits

- Provides certainty for undertakings and supervisory authorities alike as to whether undertakings should be notified of an intention to set a CAO.

2.28. Costs

- Supervisory authorities may not be able to act immediately, even if it would be desirable, due to the obligation to notify the undertaking of their intention to set a CAO. Any adverse implications for policyholders and beneficiaries are addressed by imposing a very short timeframe for the undertaking to react to the supervisory notification, i.e. 24 hours.

Policy Issue 2 – Time period for provision of requested information by the undertaking to the supervisory authority

Option 2.1: The ITS should confer upon the supervisory authority, the ability to define the timeframe which the undertaking should be given to meet any information request.

2.29. Benefits

- Provides flexibility and the ability for supervisory authorities to use judgement regarding the specific information being requested when assessing the timeframe within which an undertaking might reasonably provide such information to set the CAO. This ensures that no more time than necessary is lost over collecting the necessary information for deciding about a CAO.

2.30. Costs

- Undertakings cannot be certain of the timescale within which information may need to be supplied;
- The flexibility conferred upon supervisory authorities could lead to a divergence of application across Member States.

Option 2.2:

The ITS should pre-define the timeframes which the undertaking should be given to meet any information request.

2.31. Benefits

- Provides clarity to undertakings and supervisory authorities and would increase consistency of application across National Competent Authorities.

2.32. Costs

- There is a risk in limiting the supervisory authority's ability to act in a case-specific manner, and possibly adversely affecting policyholders and beneficiaries as in some cases more time than appropriate is taken before the supervisory authority is provided with the information it needs to decide on the CAO;
- It is impossible to establish in advance the type of information that might be needed for every type of risk profile or governance deviation that could arise, and thus the timeframe within which an undertaking might reasonably provide such information;
- Fixed timeframes will be disadvantageous for undertakings in some cases as supervisory authorities cannot allow for a longer timescale even where this is considered to be appropriate.

Section 6: Comparing the options

Policy Issue 1 - Prior notification by the supervisory authorities to the undertakings of their intention to impose a CAO

2.33. The preferred option is Option 1.2: the supervisor has to notify the undertaking of its intention to set a CAO under any circumstances. This option has been chosen because it doesn't prevent the supervisory authority to act on very short notice which is comparable to an almost immediate action. At the same time it gives the advantage for undertakings to react to the decision of the supervisory authority even if this reaction can only be done on a very short timeframe. This possible short timeframe does not jeopardize policyholder protection taking into account the nature and characteristics of insurance business. The other option has been disregarded because the concerned undertakings should have a fair chance to give their view and to prevent unjustified supervisory decisions with regard to the setting of a capital add-on.

Undertakings

2.34. The preferred option provides undertakings with more certainty about the supervisory action. Being notified of the supervisory authority's intention beforehand as they could provide additional information they might be able to persuade the supervisory authority either not to set a CAO or to set a smaller one. If undertakings are not allowed to provide such information in advance the immediate imposition of a CAO could lead to a breach of the SCR, unnecessarily forcing them to start implementing measures for dealing with the non-compliance.

Supervisory authorities

- 2.35. For NSAs the preferred option precludes the immediate imposition of a CAO. However enough flexibility for supervisors and an appropriate level of protection of policyholder and beneficiaries can still be ensured as the supervisory authority has the possibility to set the timeframe in which the undertaking is given the chance to react very short if necessary for maintaining policyholder protection.
- 2.36. The selection of the preferred option has required a tradeoff between improving flexibility for NSAs and greater certainty for undertakings. More weight has been given to the chance for undertakings to react to the supervisory intention.

Financial stability

2.37. The policy of no prior notification in specific circumstances could in some cases result in a short term CAO where no CAO should have been set as the undertaking concerned can demonstrate that there are good reasons not to set a one. Where the undertaking concerned is important for the market and the setting of a considerable CAO becomes public knowledge, this could lead to repercussions for financial stability where the market acts negatively on the

disclosure. Supervisory authorities are required under Article 29 of the Solvency II Directive to duly take any such potential effects into account before they take action. So the policy option chosen should not have a more adverse impact on financial stability than the alternative option.

Social Impact

2.38. This policy option is not expected to have first-order social impacts.

Policy Issue 2 – Specifying the time period for provision of requested information by the undertaking to the supervisory authority

2.39. The preferred option is Option 1: supervisory authorities are able to request information within timeframes set on a case-by-case basis. This option has been chosen because it allows supervisory authorities to tailor the time period to the information being requested and urgency of the situation. The other options have been disregarded because they limit the supervisory authorities' ability to act in a case-specific manner, and the nature of the information needed cannot always be established in advance.

2.40. The comparison of effects on different stakeholder groups may be summarised as follows:

Undertakings

2.41. Undertakings will be impacted by any lack of consistency in the procedures used to setting, calculating and removing CAO across a single market and across Member States.

2.42. Whilst consistent treatment would ensure clarity of expectations, they may not allow sufficient discretion for supervisory authorities to take decisions tailored to the individual situation of an undertaking, leading to convergence in methodology but in the end divergence in outcomes across undertakings.

Policyholders and beneficiaries

2.43. From the policyholders' perspective it is very important that supervisory authorities are able to calculate and apply any CAO expediently. When time frames for information requests are set on a case-by-case basis, this ensures that no time is lost with the supervisory authority waiting longer than necessary for information needed in taking a decision about a CAO to be provided.

Supervisory Authorities

2.44. The primary objective of Solvency II is policyholder protection. As such anything which fetters the supervisory authority's ability to secure policyholder protection quickly by applying a CAO, if necessary, is undesirable. Given the specific nature of CAO, setting a universal timescale within which information should be provided risks either being too short a time limit for complex requests or providing over-generous timescales for simple requests.

Financial stability

2.45. For the policy on timeframes for information requests no impact on financial stability has been identified.

Social Impact

2.46. This policy option is not expected to have first-order social impacts.

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 objectives specified above:

<p>Objective 1: To ensure a consistent approach to the procedures for setting, calculating and removing add-ons – consistency in application is essential if the goals of policyholder protection and level playing field are to be promoted.</p> <p>Objective 2: To ensure clear communication between the supervisory authority and undertakings throughout the procedure of setting, calculating and removing capital add-ons.</p>	<p>Possible indicators of progress towards meeting the objectives may be:</p> <ul style="list-style-type: none">• Number and average amounts of CAO imposed by supervisory authorities• Averaged length of time taken between the prior notification by the supervisory authorities to the undertakings of their intention to impose a CAO and the adoption of such measure.• Number of revocation or removal of set CAO due to ongoing monitoring by the supervisory authority if the undertaking has achieved any progress• Number of national appeal cases that the imposing of CAO have not followed due process
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Annex III: Resolution of comments

Summary of Comments on Consultation Paper EIOPA-CP-14/053 CP-14-053-ITS on capital add-on				
<p>EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), ACTUAM S.à.r.l, Actuarial and Risk Services Luxembourg, AMICE, Financial Services User Group (FSUG), GDV, Institute and Faculty of Actuaries, Insurance Europe, and Investment & Life Assurance Group (ILAG).</p> <p>The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/053.</p>				
No.	Name	Reference	Comment	Resolution
1.	IRSG	General Comment	<p>The IRSG welcomes the opportunity to comment on this ITS on capital add-on.</p> <p><input type="checkbox"/> The IRSG welcomes the level of transparency and documentation required by supervisors when setting capital add-ons.</p> <p><input type="checkbox"/> Article 1(3) should be deleted as it could lead to arbitrary decisions, since according to this paragraph the supervisory authority would have the option not to notify the imposition of a capital add-on. It is unjustifiable that supervisors deem a notification to be unnecessary and impose a capital add-on without further reasoning. This cannot be warranted as undertakings should have the option to respond.</p>	<p>Noted</p> <p>Agreed. The paragraph has been deleted.</p> <p>The paragraph has been deleted. Please note however, that depending on the circumstances, the timeframe for a response may be very short in order to protect the interests of policyholders</p> <p>See also Feedback Statement.</p> <p>The decision always has to be taken on a case-by-case basis according to what is an appropriate</p>

			<p><input type="checkbox"/> There is no consistency in the timeframes for undertakings to respond after the notification of a capital add-on which in the context of a group, can result in an inconsistent treatment of comparable undertakings.</p> <p><input type="checkbox"/> The ITS should make clear that a capital add-on should be the last resort supervisory measure as set out in the Directive (Recital 27 and Article 37).</p> <p><input type="checkbox"/> Supervisors should establish a board of appeal for undertakings, where a process of appeal does not currently exist. At the board of appeal undertakings can dispute decisions taken by supervisors on capital add-on amounts, notification periods, timeframes, communication, and decisions to change or sustain a capital add-on. This is especially important where supervisors take decisions without reaching an agreement with the undertaking first.</p>	<p>timeframe for a response under the specific circumstances. Just because undertakings are of the same group does not mean the same timeframe should apply. Please also note that the College of supervisors will discuss capital add-ons.</p> <p>Disagreed. Please see feedback statement.</p> <p>Disagreed. Please see feedback statement.</p>
2.	AMICE	General Comment	<p>AMICE welcomes the opportunity to comment on the Implementing Technical Standards (ITSs) on Capital Add-Ons. The exceptional nature of capital add-ons should be clearly stated in the ITSs.</p> <p>Recital 27 from the Level 1 text states that “the imposition of a capital add-on is exceptional in the sense that it should be used only as a measure of last resort, when other supervisory measures are ineffective or inappropriate”.</p> <p>This should be clearly stated in this paper.</p>	<p>Noted</p> <p>Disagreed. See feedback statement.</p>

			When there is a deviation, the supervisory authorities should engage in a dialogue with the undertakings about the measures and actions the undertaking would put in place to solve the situation. Hence, the supervisory authorities should assess first whether other measures can be applied before imposing a capital add-on.	Noted. This follows from article 37 of the Directive.
3.	FSUG	General Comment	FSUG would like to back up the position of the EIOPA presented in the Consultation Paper on the draft proposal for Implementing Technical Standards on capital add-ons.	Noted.
4.	GDV	General Comment	<p>GDV welcomes the opportunity to comment on the draft proposal for implementing technical standards on capital add-ons.</p> <p>In general, GDV has two concerns about the procedures to decide on setting, calculating and removing capital add-ons:</p> <p><input type="checkbox"/> first, the lack of harmonisation concerning time frames for insurance undertakings to respond to changes or notifications of capital add-ons (Articles 1, 3 and 4);</p> <p><input type="checkbox"/> second, the far-reaching cooperation and information requirements (Article 2).</p>	<p>Noted.</p> <p>See feedback statement.</p> <p>Undertakings are subject to a general requirement to submit any information that the supervisory authority needs for supervisory purposes on request in any case in all jurisdictions. Please see feedback statement.</p>
5.	Insurance Europe	General Comment	Insurance Europe welcomes the opportunity to comment on the Implementing Technical Standards (ITSs) setting out the procedure to be followed for supervisory authorities when setting, calculating or removing capital add-ons. Insurance Europe appreciates the level of transparency foreseen in the ITS and that the requirements place upon supervisors to provide comprehensive documentation as an accompaniment to any capital add-on request. However, we have the following strong concerns:	Noted.

			<p><input type="checkbox"/> The possibility for supervisors to deem a notification unnecessary and impose a capital add-on without further justification as set out in Article 1(3). Under no circumstances can this be justified as undertakings should have the option to retort.</p> <p><input type="checkbox"/> The lack of harmonisation of timeframes for undertakings to respond after the notification of a capital add-on (Articles 1, 3 and 4) which in the context of a group, can lead to inconsistent treatment of comparable undertakings.</p> <p><input type="checkbox"/> As a reminder, the ITS should also clearly state that a capital add-on should be the last supervisory measure as set out in recital 27 and Article 37 of the Directive.</p> <p>Process of appeal at national level</p> <p>Where a process of appeal is currently not established supervisors should consider setting up a board of appeal for undertakings where decisions on capital add-on amounts, notification periods, timeframes, communication, and decisions to change or sustain a capital add-on could be disputed, if agreement between the supervisor and the undertaking has not been reached in the process.</p>	<p>Agreed. See feedback statement.</p> <p>See resolution to comment 1.</p> <p>See feedback statement.</p> <p>See feedback statement.</p>
6.	ILAG	General Comment	Notwithstanding the provisions of Article 6(2) it is important that when a CAO is applied a review period is agreed with the supervisory authority so that the actions of the undertaking are assessed in the light of the CAO and the applicability of the CAO can be reconsidered.	<p>Disagreed.</p> <p>There will be at least an annual review in any case. Until then an undertaking only has to demonstrate that the circumstances have changed if it thinks the capital add-on should be reviewed.</p>
7.			This comment was submitted as confidential by the stakeholder.	

8.	IRSG	Article 1 (1)	<p>Redrafting suggestion:</p> <p>p. 7 Article 1 (1) second line: delete the word "concerned".</p>	<p>Disagree.</p> <p>The word was included because stakeholders usually ask for the "concerned" to be inserted.</p>
9.	Insurance Europe	Article 1 (1)	<p>The title of this Article can be misleading as the notification suggested here is in fact a notification of the intention to impose a capital add-on rather than the communication of the decision to set a capital add-on as set out in Article 4(1). Therefore, we propose the following redrafting of the title: "Notification of the intention to set a capital add-on". Furthermore, it also applies when determining the date from which the capital add-on shall be applicable as set out in Article 4(2)(c), the supervisory authority should take into account a reasonable time frame for insurance undertakings to be able to comply. Insurance and reinsurance undertakings need enough time to accommodate the decision of the supervisory authority to set a capital add-on, and to proceed with measures to comply.</p> <p>Not necessary to refer to the undertaking "concerned". Please delete this word as it does not add anything.</p>	<p>Agreed.</p> <p>EIOPA has changed the title to leave no doubt that this is the notification about the intention not about the actual setting of the CAO.</p> <p>Disagreed. Please see feedback statement. .</p> <p>Disagree, See resolution to comment 8 above.</p>
10.	IRSG	Article 1 (2)	<p>This article should include a minimum time to be allowed for companies to respond to capital-add on notifications.</p> <p>It is unclear why the timeframe for the undertaking to respond to a notification of the imposition of a capital add-on is left for national discretion. This is especially problematic for comparable undertakings belonging to the same group, where there can be differences in the timeframe given to respond to a supervisory notification about imposing a capital add-on. A possible resolution would be to set a minimum timeframe in the ITS such that the same deficiencies are granted the same consideration by the supervisor, but also the group in its entirety.</p>	<p>Disagreed. Please see feedback statement.</p>
11.	AMICE	Article 1 (2)	<p>In our view, EIOPA should set the timeframe for the firm to respond to</p>	<p>Disagreed. Please see</p>

			the notification. We agree however, that the supervisory authority can extend this timeframe to accommodate different situations.	feedback statement.
12.	GDV	Article 1 (2)	<p>The ITS should include a minimum time period to be allowed for insurance undertakings to respond to capital add-on notifications. Hence, GDV asks EIOPA to amend Article 1 (2) of the ITS by the following:</p> <p>“The supervisory authority shall specify a timeframe, taking into consideration the severity of the deviation concluded, for the insurance or reinsurance undertaking to respond to the notification of a capital add-on. The timeframe should be no less than 1 month.”</p>	Disagreed. Please see feedback statement.
13.	Insurance Europe	Article 1 (2)	<p>It is not evident why the specification of a timeframe for the undertaking to respond to a notification of imposing a capital add-on is left for national discretion. The approach is not harmonised if for instance given two comparable undertakings in the context of a group, one supervisor grants one undertaking one week to respond, whereas another supervisor gives two months for the other undertaking. One possibility could be to set a minimum timeframe in the ITS so that the same deficiencies are granted the same consideration by the supervisor but also by the group as a whole.</p> <p>Accordingly, we propose the following redraft: “The supervisory authority shall specify a timeframe, taking into consideration the severity of the deviation concluded, for the insurance or reinsurance undertaking to respond to this notification. However, the timeframe should be no less than 1 month”.</p>	Disagreed. Please see feedback statement.
14.			This comment was submitted as confidential by the stakeholder.	
15.	IRSG	Article 1 (3)	<p>According to this paragraph the supervisor would have the option not to notify the imposition of a capital add-on. In any case, prior to setting a capital add-on, the supervisory should inform the undertaking concerned of its intention (together with the reasons for setting a capital add-on). Therefore, this paragraph should be deleted since it could lead to arbitrary decisions.</p>	Agreed. See resolution to comment 1 above.
16.	AMICE	Article 1 (3)	We fully oppose any provision by which supervisory authorities are	Agreed. See resolution to

			allowed not to notify the undertaking when imposing capital add-ons. There are no circumstances by which this possibility can be justified. We suggest this paragraph be deleted.	comment 1 above.
17.	GDV	Article 1 (3)	GDV views critically the option for supervisory authorities to be able to set capital add-ons without notifying insurance or reinsurance undertakings. This could lead to arbitrary decisions and legal uncertainty and makes it very difficult for undertakings to respond and comply to decisions about capital add-ons.	Agreed. See resolution to comment 1 above. Not notifying the undertaking beforehand does however not increase the risk of arbitrary decisions.
18.	Institute and Faculty of Actuaries	Article 1 (3)	We recommend the words "deems it necessary to take urgent action or it"are removed from this sub-article. Removing this wording still allows urgent action to be taken, whilst maintaining an inbuilt safeguard that such action must be justified to avoid detriment.	See resolution to comment 1.
19.	Insurance Europe	Article 1 (3)	We fundamentally disagree with the option for supervisors not to notify the undertaking when imposing a capital add-on. Under no circumstances can this option be justified as it could lead to arbitrary decisions and legal uncertainty without undertakings having the option to respond. This is especially unjustifiable where the setting of a capital add-on would lead to a breach of the SCR. This would have very negative consequences for shareholders and holders of other capital instruments.	Agreed. See resolution to comment 1 above. See resolution to comment 17. See resolution to comment
20.	IRSG	Article 2	The obligation for undertakings to provide "any relevant information" appears onerous. The supervisor should only request information related to their decision to calculate, set or remove the capital add-on. Documentation requirements should be defined clearly in this manner, such that it does not allow the supervisor to have unlimited flexibility in their requests. We therefore request to have the word "any" removed from this sentence.	Disagreed. Please see feedback statement.
21.	GDV	Article 2	The scope of Article 2 seems to go beyond what is necessary and what is required by the legal texts. The obligation to supply "any relevant information" goes beyond what is stated in Level 1 and Level 2 legal texts. In particular, Article 35 (1) and (2) of the Solvency II Directive clearly state that the mandate for implementing such rules lies with	Disagreed. Please see feedback statement. If the information is already available via regular reporting, the

			<p>member states as both paragraphs begin with "member states shall ...". Henceforth, the consultation papers of the ITS can only cover how the information shall be processed and transmitted to the national supervisory authorities as stated in Article 35 of the Solvency II Directive. Thus, a mandate to set up substantial and relevant information requests like the one in Article 2 of the ITS cannot be derived from Article 35 of the Solvency II Directive. In addition, we note that such regulation requesting extensive information also has no foundation in Article 37 of the Solvency II Directive and Article 276 et seqq. of the Delegated Acts. The planned request for cooperation and sharing of "any relevant information" in Article 2 of the ITS is too far-reaching and should be deleted or diminished.</p> <p>Instead, the supervisory authorities should use the already supplied information by the insurance undertakings from other various reporting requirements to conduct their supervision.</p> <p>As a minimum, the process in terms of documentation requested has to be clearly delineated and linked to the deficiency so that the supervisor is not in a position to have unlimited leeway in its requests.</p>	<p>supervisory authority will not request it.</p> <p>It is not exactly clear to EIOPA what you mean by that. The supervisory authority will normally send a written request detailing the required information. As a rule it should not be difficult for the undertaking to figure out why the supervisory authority asks for the information given that the supervisory authority at this point has already informed the undertaking that and why it considers setting a capital add-on.</p>
22.	Institute and Faculty of Actuaries	Article 2	<p>We recommend the words "that the supervisory authority considers" are removed from this article. Removing this wording still allows the supervisor to request the pertinent information, whilst removing the risk that firms are subject to arbitrary requests at any time.</p>	<p>Partially agree. The wording of the Article has been changed anyway and no longer includes the wording you suggest removing. The wording does however not imply that supervisory authorities may make information requests at whim. It only acknowledges that it is up to the supervisory authority to decide whether information is relevant for the</p>

				supervisory decision.
23.	Insurance Europe	Article 2	The obligation to supply “any relevant information” is excessive and we therefore request to have “any” deleted from the sentence as information requirements should be confined to that information necessary for supervisory authorities to take a decision to set, calculate or remove a capital add-on. As a minimum, the process in terms of documentation requested has to be clearly delineated and linked to the deficiency so that the supervisor is not in a position to have unlimited leeway in its requests.	Disagreed. Please see feedback statement.
24.	GDV	Article 3 (1)	The timeframe for any information request addressed to the insurance or reinsurance undertaking should be adequate and usually not less than 1 month. It should be stated clearly that the timeframe has to be adequate. It should be mentioned explicitly that the supervisory authority shall take into account “the extent and complexity of the requested information, its importance for the decision, the severity of the deficiencies and the urgency of the proceeding of setting a capital add-on.”	Disagreed. Please see feedback statement.
25.	Insurance Europe	Article 3 (1)	In accordance with our redrafting proposal for Article 1(2), the timeframe for the supervisor requesting any information from the insurance or reinsurance undertaking should be adequate and usually not less than 1 month – this should be clearly stated. It should be mentioned explicitly that the supervisory authority shall take into account “the extent and complexity of the requested information, its importance for the decision, the severity of the deficiencies and the urgency of the proceeding of setting a capital add-on” when determining the timeframe.	Disagree. Please see feedback statement.
26.	Institute and Faculty of Actuaries	Article 3 (2)	We suggest this sub-article is expanded, so that it sets out how a timetable for meeting the information request is agreed, should the (re)insurance firm be unable to meet the initial timeframe proposed by the supervisory authority.	Disagreed. This is not practicable in ITS. The supervisory authority will accept the explanation of the undertaking and extend the timeframe or not. In either case, the supervisory authority will take the necessary steps if it comes to the

				conclusion that not being able to meet the timeframe is owing to organisational deficiencies within the undertaking.
27.	Insurance Europe	Article 4 (1)	We understand that this Article deals with the final decision to impose a capital add-on after the notification requirement as set out in Article 1 and having taken the information provided by the undertaking during the set timeframe into account.	This is correct. The heading of the Article has been redrafted in order to show the clear distinction between the two Articles.
28.	ACTUAM S.à.r.l, Actuarial and Risk Services Luxembourg	Article 4 (2)	Regarding the amount of the capital add-on, does EIOPA intend to put in place formal capital buffers under Pillar 2 by risk? In fact for specific risks of the undertakings (i.e. with specific frequency and severity) capital buffers could be considered when capital add-on is assessed.	Disagreed. Capital add-ons cannot be set with the intention to provide a capital buffer. They are only admissible under the very specific circumstances described in Article 37 of the Directive. The Article also sets out what is to be taken into account with regard to the amount of the capital add-on.
29.	GDV	Article 4 (2)	<p>When determining the date from which the capital add-on shall be applicable, the supervisory authority should take into account a reasonable time frame for insurance undertakings to be able to comply. Insurance and reinsurance undertakings need enough time to accommodate the decision of the supervisory authority to set capital add-ons, and to proceed with measures to comply.</p> <p>Hence, GDV asks EIOPA to amend the following to indent (c): "The supervisory authority should consider a reasonable time frame in determining the date from which the capital add-on is applicable."</p>	Disagreed. Please see feedback statement.

30.	Institute and Faculty of Actuaries	Article 4 (2)	We recommend the basis, as well as the methodology, should be communicated in bullet (b).	Noted. EIOPA is not sure what you mean by "basis". (a) fully covers the "why" whereas (b) fully covers the "how".
31.	Insurance Europe	Article 4 (2)	The communication provided by the supervisor should also include the reasons why the arguments of the insurance undertaking were not agreed upon to ensure a maximum level of transparency.	Partially agree. Setting out the reasons for the decision includes – implicitly or explicitly – addressing why the supervisory authority could not accept the arguments put forward by the undertaking.
32.	IRSG	Article 6 (1)	It is in the best interest of the undertaking to ensure that the capital add-on is removed as soon as possible. It is therefore expected that undertakings will update the supervisors continuously on the progress made and that the supervisors' will remove the capital add-on in a timely manner, when it is no longer justified.	Noted. This is what EIOPA would expect as well.
33.	Insurance Europe	Article 6 (1)	It is in the interest of the undertaking to have a capital add-on removed as soon as possible. Hence, it is expected that undertakings will update the supervisors on a continuous basis of the progress made and that supervisors manage the progress updates and considerations to remove any capital add-on in a timely manner. The supervisors are expected to remove a capital add-on when it is no longer justified.	Noted. See resolution to comment 32 above.
34.	Institute and Faculty of Actuaries	Article 6 (2)	We suggest changing the wording "requirement to use an internal model" to "the use of an internal model".	Agreed. EIOPA changed the text according to the suggestion.
35.	Insurance Europe	Article 7	Article 5 sets out that if requested by the national supervisory authority the undertaking should provide progress reports showing the progress made to remedy the deficiency. On the other hand, we expect undertakings to update the national supervisors on a continuous basis on their progress, hence it is not clear what "otherwise" refers to and it	Partially agreed. The "otherwise" refers to progress reports that are not requested by the supervisory authority but

			should be deleted.	provided by the undertaking on a voluntary basis, i.e. the updating on a continuous basis that you expect to take place. However, please see new drafting of the Article.
36.	ILAG	2.6	We recommend that ITS should monitor whether supervisory authorities are using the powers given to them to require capital add-ons with reasonable frequency and proportionately, and if need be require them to do so.	The Directive (see Article 52) already provides for the monitoring of supervisory practices on capital add-ons: supervisory authorities will annually report on the capital add-ons they have set and on the average amounts of the capital add-ons to EIOPA in a quite granular manner and EIOPA will report to the European Parliament, the Council and the EU Commission
37.	ILAG	2.18	We support option 1.1 as providing the necessary flexibility and ability to act quickly where necessary.	Noted.
38.	ILAG	2.22	We support option 2.1 as providing the necessary flexibility and ability to exercise judgment.	Noted.