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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Insurance)
Subject:	Solvency II: Presidency non-paper on proportionality (WK 3334/2022): replies from 17 Member States

Presidency non-paper for the discussions on proportionality introduced by EC's proposal amending the Solvency II Directive 2009/138/EC (DL 18/03/2022)
Replies from 17MS: FI SI EE LT NL RO AT IE SK DE ES BG PL IT CZ EL PT

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Question	MS reply
I. Identification of low risk profiles in Article 29a, (§1, ii) : cross-border activity criterion	
Q.1. Would Member States have a preference between the following options: **Option 1:** maintaining the initial proposal of the EC providing for a threshold of 5 % of the annual gross written premium of the undertaking; **Option 2:** envisaging an absolute threshold of EUR 5 000 000 gross written premium; **Option 3**: combining a relative threshold and an absolute threshold : EUR 15 000 000 or 5% of the total annual gross written premium income (Slovenian Presidency compromise text).	FI Comments: FI supports option 3 with a modification. We consider that both the relative and absolute threshold should be exceeded in order for the undertaking not to be able to be classified as a low-risk profile undertaking. Meaning that the criterion would only be met when the higher of EUR 15 000 000 or 5 % is exceeded. SI Comments: Option 3 EE Comments: We prefer option 1. Option 3 is not clear in the context of non-life insurance. Point (c)(iv) of paragraph 1 in Article 29a provides that one of the criterions is that the annual gross written premium is not higher than EUR 100 000 000. So, there can't be situation where less than 15M requirement is not met and less than 5% is met. It means that 5% threshold is meaningless.

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Question	MS reply
	LT Comments: Option 1. Or option 3 as compromise. NL Comments: NL is flexible on this issue. RO Comments: We support option 3. AT Comments: We support **Option 2** (but are open to find a compromise). IE Comments: We would note that the issue of cross-border business for low risk profile undertakings now appears to be fully separated from other cross-border issues. This is fundamental to our consideration of this point. Option 3, when initially presented by COM during the Slovenian Presidency, was described as relating to the "higher of…" the two considerations. Now it seems to relate to the "lower of…". Which

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	excludes more firms from being LRUs. We would be more supportive of the COM version rather than the version as drafted. Option 2 – being set at €5m, seems too low. Would have been willing to consider a €15m threshold as being in line with Solvency II threshold more generally. As Option 3 potentially excludes more undertakings from being LRUs than Option 1, and the d*e minimus* for Option 2 is set too low, we would prefer Option 1 out of the three choices. SK Comments: We can support a combination of a relative threshold and an absolute threshold as it is stated in Slovenian Presidency compromise text. DE Comments: We support option 1. We would have reservations about option 3. 15 million euro of cross-border business is significant. Operating cross-borders is a complex and potentially risky activity that needs to be supervised appropriately. We

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Question	MS reply
	have seen examples in the past where the cross-border business in particular was problematic. As a compromise, we could support option 2. ES Comments: We support Option 1, the initial proposal of the European Commission. We consider that only a relative threshold works to capture the risks brought by the cross border activity. Option 3, as proposed by the Slovenian Presidency would allow that an insurer based in a given MS operates fully cross border in another MS with a looser regime, or a less strict regime, provided that the GWP income does not exceed 15 million. In our view, this is not a satisfactory outcome and could have unintended consequences. Last, we would like to remark that the use of proportionality measures is not limited to LRP undertakings. Supervisors can grant proportionality measures when the criteria are not met, but subject to a case by case analysis. BG Comments: We could support **Option 2,** but we are also open to consider **Option 3**.

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	PL Comments: We prefer option 1. IT Comments: **We opt for option 1:** We share the doubts on changing the cross-border criterion, **article 29a (ii)**. So we would keep the previous wording of 5% of total annual gross written premium. As several MS stated during the last meetings, we have concerns on business concentration outside undertaking's home country and less prudent regime also for pillar III. It would also contribute to ensuring the level-playing field to avoid empty-shells. CZ Comments: We support option 1 maintaining the Commission's proposal. EL Comments:

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	As regards cross-border activity criterion, in order to identify low risk profiles in Article 29a, we have no strong position and we remain flexible to the proposed options. PT Comments: We prefer Option 3, combining a relative threshold and an absolute threshold, as in the Slovenian Presidency compromise text.
II. Identification of low risk profiles in Article 29a, (§1) : investment and risk-based criteria	
Q.2. Would Member States have a preference between the following options : **Option 1:** maintaining the traditional investments criterion **Option 2:** replacing the criteria "traditional investments" with a criterion based on market risk SCR module. If so, would the criterion "the gross market risk module on total investments is not higher than 15%" be appropriate? **Option 3:** replacing the criteria "interest risk SCR" and "traditional investment" with a single criterion based on market risk SCR module. If so, would the criterion "the gross market risk module on total investments is not higher than 15%" be appropriate?	FI Comments: FI strongly prefers option 2 or 3. Options 2 and 3 are more risk-sensitive compared to option 1, and therefore more suitable for determining the investment criterion for low-risk profile undertakings. SI Comments: Option 1 EE Comments: We prefer option 1. At the moment we would have 2 low risk profile undertakings and options 2 and 3 might mean that even those

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	undertakings will not be classified as low risk profile undertakings. It would be complicated to support the whole text if Estonia's insurance undertakings can't benefit from the proportionality measures. LT Comments: Option 1. Open to other options, don't have strong preference. NL Comments: NL prefers option 2 or 3, with a preference for option 2. In addition we would prefer a slightly higher threshold of 17,5%. RO Comments: There are some traditional investments with higher risk as well, therefore we support option 1. AT Comments: Preliminary, we support **Option 3** (and **Option 2**) but we would like to ask for more information concerning the impact of the proposals. IE Comments:

PUBLIC

Question	MS reply
	No strong preference. SK Comments: We prefer replacing the criteria "traditional investments" with a criterion based on market risk SCR module as it is mentioned in option 2. DE Comments: We support option 2 because the market risk criterion is more risk-sensitive than the criterion on traditional investments. We would propose a higher threshold of 17.5%. A threshold of 15% would reduce the number of low risk profile undertakings in our national market compared to the Commission proposal what would not be appropriate in our view. Our concern with regard to option 3 is that the interest rate risk criterion identifies in particular the life insurers with long-term guarantees. These insurers are typically not low risk, in particular where they depend on the transitional measures. However, we can support option 3 if a satisfactory solution on question 4 is found. ES Comments:

PUBLIC

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	We have been not provided with an estimation of the impact of the changes that the Presidency put forward in Option 2 and in Option3. In absence of such impact assessment, we would like to maintain the traditional investment criterion as included in Commission´s proposal. Therefore, we support Option 1. We made our impact assessment in our country, in Spain, and we did not spot any issue with the definition of traditional investments. Furthermore, we are reluctant to reduce the number of criteria, as proposed in Option 3. Each criteria intends to capture an objective feature. We are, in principle, against reducing so much the requirements to qualify as LRP undertakings. BG Comments: We could support **Option 2.** However, we are also **open for Option 3.** We are in favour of a criterion that provides a clear calculation and easy verification of the calculation. We would welcome any input from EIOPA in clarifying the cumulative effect of all criteria. PL Comments: We prefer option 1.

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Question	MS reply
	IT Comments: **We opt for option 1** CZ Comments: We prefer option 1 maintaining the traditional investments criterion. EL Comments: As regards investment and risk-based criteria, we would prefer maintaining the traditional investments criterion (Option 1). We could support option 2 or 3, if certain issues were clarified, e.g. what is the meaning of "gross market risk module on total investments" and in what perspective it differs from the market risk module of article 164 of Regulation 2015/35. PT Comments: We support the COM's proposal (option 1), although we agree that it is not straightforward that all bonds and equities can be considered as traditional, since they can have different features that imply different

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	risk levels. Accordingly, some refinements can be made to the investment criteria. Furthermore, we are strongly against option 3. • It is important to keep in mind that each of the criteria proposed (which largely follow EIOPA's Opinion) has its own purpose to capture the level of undertaking's risk. • In particular, the purpose of the "interest rate risk" criterion is to capture risks in terms of business model sustainability of life business, since it includes the IR risks stemming from both assets and liabilities [combined ratio being the equivalent criteria for the non-life business]. • On the other hand, the "investment" criterion is intended to capture the risk of the investment policy. • Additionally, option 3 would reduce the number of criteria for the life business to 4 criteria, which is deemed insufficient to capture the risk profile of an undertaking. We also have some reservations regarding option 2. • First, we note this is a new criterion whose calibration should be supported by an adequate study and impact assessment; • Further, we note that the risk captured by this criterion is not the same as with the "(non)traditional investments" criterion; indeed,

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Question	MS reply
	this last intends to capture the risk of complexity, and the related additional supervisory effort, rather than the market risk of the investment *per se* which is already accounted for in the SCR; • For instance, an undertaking may have a portfolio comprised only of traditional investments but with significant exposure to non-listed equity and/or low rated debt that would trigger this new criterion; which we consider not to be appropriate; • Finally, we point out that the 'market risk SCR module' comprises the 'interest rate risk submodule' thus leading to a double consideration of such risk.
Q.3. In case the traditional investments criterion were to be maintained, would Member States have a preference between the following options? **Option 1:** maintaining the initial Commission's proposal **Option 2:** foreseeing that the European Commission can specify the criteria and adapt the definition of traditional investments (Slovenian Presidency compromise text) **Option 3:** empowering EIOPA to draft Regulatory Technical Standards to further specify traditional investments with references to CIC categories EIOPA	FI Comments: FI primarily does not support option 1 in question 2. However, if the traditional investment criterion would be maintained, FI supports option 3 and secondarily option 2. Furthermore, residential property should be included in the list of traditional investments. SI Comments: Option 2 EE Comments:

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Question	MS reply
	We are open to options 2 and 3. LT Comments: Option 1. Open to other options, don't have strong preference. NL Comments: In that case, we prefer option 2 whereby it is important for us that the category "loans" is added to the traditional investments, next to bonds in article 29a (1c) last paragraph. RO Comments: We support option 1, but we are also comfortable with option 3. IE Comments: No strong preference. SK Comments: As mentioned above, we prefer replacing the criteria "traditional investments", but in case the traditional criterion is maintained, we prefer option 3.

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Question	MS reply
	DE Comments: We support the Slovenian Presidency compromise text (option 2). We have reservations about option 3 because the CIC codes are not sufficiently granular to distinguish traditional and non-traditional investments. We can accept option 3 with the following modification: "empowering EIOPA to draft Regulatory Technical Standards to further specify traditional investments". We support the inclusion of loans into the category of traditional investments. ES Comments: As we prefer maintaining traditional investments criterion, we would like to express our support for Option 2 to empower the Commission to specify and to adapt the definition of traditional investments PL Comments:

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	We prefer option 3, i.e. giving power to EIOPA to draft RTS to further specify traditional investments with references to CIC categories EIOPA. IT Comments: We would consider useful to deepen the criterion on the traditional investment in a second-level measure (delegated acts or technical standards). However, **we do not have a strong preference between option 2 and 3**, both are doable. CZ Comments: We support option 3 empowering EIOPA to draft RTS to specify traditional investments with references to CIC categories EIOPA. EL Comments: In case the traditional investments criterion is to be maintained, then we are in favour of the last part of option 2 (i.e. adapting the definition of traditional investments in accordance with the Slovenian Presidency text), but we could also accept the Commission's proposal (Option 1), if it is further clarified that the investments are taken into account in a "look through" perspective.

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	PT Comments: We would prefer option 3.
III. Exclusion of entities breaching their SCR in Article 29a, §3:	
Q.4. Would Member States have a preference between the following options? **Option 1:** maintaining the initial proposal of the European Commission, i.e. without exclusion of undertakings in breach of SCR; **Option 2:** automatically preventing undertakings that do not comply with their SCR ratio, with or without the use of transitional measures, from being classified as low-risk profile undertakings; **Option 3:** addressing non-compliance with solvency requirements through the safeguard power referred to in Article 29c(2).	FI Comments: FI supports option 2. Option 3 can also be acceptable. SI Comments: In Article 29c (2) there is a provision, that NCA refrains from using proportionality measures listed in A 29c (1) in case that LRPU has high risk profile (like breach of SCR). So NCA can request to report annually RSR, ORSA, SFCR. NCA can decide that LRPU which breach SCR or is likely to breach SCR, can not use any of the proportionality measures listed in A 29c (1). Level of the SCR ratio is not the criteria for low risk profile – it should be the business model and size of the undertaking within the national market.

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Question	MS reply
	We prefer option 1 which already includes option 3, but can live with option 2. EE Comments: We prefer option 2. LT Comments: Option 3. NL Comments: NL prefers option 3.

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Question	MS reply
	RO Comments: We support option 2. AT Comments: As to the <u>initial</u> classification, we support **Option 2**. As to SCR breaches <u>at a later stage</u>, more flexibility is needed to ensure adequate and proportionate consequences based on a case-by-case assessment. IE Comments: We would like to check whether Option 3 could be applied immediately, rather than waiting for the next financial year? If that was the case, we would support Option 3 as it should allow quicker intervention and thus greater policyholder protection. We can also live with Option 2.

PUBLIC

Question	MS reply
	SK Comments: We prefer option 2, but only with regards to the initial classification of LRPU, so that this option does not result in automatic LRPU status removal if undertaking does not comply with SCR ratio. We can alternatively support option 3. DE Comments: We support option 2. An insurer that is in breach of the SCR or that depends on the transitional measures to comply with the SCR is not of low risk. Instead of lowering the standards for such insurers, they should be under more intense supervision. Second best solution would be to clarify in Article 29c that non-compliance with the SCR, with or without the transitionals, is one of the

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	exceptional circumstances where the supervisor can request the insurer to refrain from using one or several proportionality measures. ES Comments: We see merit in Option 2, but only if it is an impediment in the initial classification as LRP undertaking. Beyond that point in time, non-compliance with solvency requirements should be addressed as for non LRP undertakings. BG Comments: We could support **Option 2**. PL Comments:

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	We prefer option 2. Undertakings that do not comply with SCR should not initially be classified as LRPUs by NSAs.. However we do not support cease of classification of LPRUs in case they do not meet SCR. We agree with arguments presented by European Commission and several delegations during VTC on the 11th of March. If a LRPU does not meet SCR, art. 29c par. 2 of the directive should be applied. IT Comments: **We opt for option 2** Indeed, we already advised (mentioning the reference to Recital 11 a) to take duly into account that the deterioration of capital solvency must be monitored by the Supervisor not within the scope of application of proportional measures but with ad hoc interventions of corrective prudential measures. Indeed, in the mentioned case, the LRPU classification should be automatically removed. As a second best this definition could be clarify either in Delegated Acts or EIOPA guidelines.

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Question	MS reply
	CZ Comments: We prefer option 2 automatically preventing undertakings that do not comply with their SCR ratio, with or without the use of transitional measures, from being classified as LRPU. EL Comments: In principle, we support option 1, but we would not object to Option 3. We could also support Option 2, if it made reference only to the initial classification of an undertaking as a low-risk profile undertaking. PT Comments: We consider that the proposal in our non-paper already tackles the concerns around this question. Indeed, the breach or near breach of SCR as well as dependence of TAs for compliance with SCR, are precisely

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Question	MS reply
	situations where the use of proportionality measures may be unwarranted. And each case may deserve a particular consideration which can only done by the supervisor. Notwithstanding, we would oppose option 2, since it is expected that non-compliance with the SCR would be a temporary situation [please note that undertakings have to present a plan for restoring compliance with SCR in 6-months], unlike the 'structural' situations – as pure reinsurers or internal model users – foreseen in article 29a(3). In any case, we are strongly against assessing the non-compliance with the SCR without the transitional measures, both because these measures are part of the regime, and undertakings manage their business considering them as well as the fact that the regime already includes specific requirements and provisions for undertakings that do not comply with the SCR without the transitional measures. [e.g. phase in plan]
IV. Group proportionality in Article 213a	
Q.5. Do Member States agree with this new recital?	FI Comments: FI: Yes. SI Comments:

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Question	MS reply
	yes EE Comments: Yes. LT Comments: We have doubts that a group might be classified as low-risk profile when some undertakings within the group do not meet the criteria to be classified as low-risk profile undertakings. NL Comments: Yes. RO Comments: Yes, we do agree with this new recital. AT Comments: **Yes.** IE Comments: We can agree to this new recital.

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Question	MS reply
	SK Comments: We agree with the new recital. DE Comments: We can accept the inclusion of the new recital. ES Comments: We agree on the proposed recital BG Comments: We could support the proposed new recital. However, we are in favor of clear guidance when certain proportionality measures should not automatically imply. PL Comments: We agree with this new recital. IT Comments: **We don't fully support the introduction of such recital since**:

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	-the identification of LRP groups has not been investigated in depth and an impact assessment at European level has not been performed; -the running of two totally independent processes of identification of LRP undertakings belonging to groups and groups themselves may not be desirable in all cases. In our view, the recital is not encompassing cases where a consultation between solo and group supervisor is preferable to ensure an appropriate application of proportionality measures at solo or group level. CZ Comments: We are not in favour of adding such a change, because we do not support the low risk profile group category. EL Comments: Yes, we support the wording of the new recital. PT Comments: We agree with this new recital.
End	FI Comments: **End**

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