Insurance Europe Response to EIOPA Consultation on Annex to Opinion on the use of risk mitigation techniques - Proportional reinsurance

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General Questions

Q1. *Please provide any general comments to Section 3: Annex on proportional reinsurance with features reducing commensurateness (5000 character(s) maximum)*

Insurance Europe welcomes the opportunity to comment on the EIOPA Consultation on the Annex to the Opinion on the use of risk mitigation techniques - Proportional reinsurance.

The objective of ensuring that capital relief appropriately reflects effective risk transfer is understood. At the same time, any assessment should remain consistent with the existing Solvency II framework and provide sufficient legal certainty for undertakings and supervisors. In this regard, some aspects of the proposed framework could be interpreted as introducing additional considerations in the assessment of well-established proportional reinsurance arrangements. This may create uncertainty regarding the interaction with the existing Standard Formula framework.

Articles 208–214 of the Delegated Regulation already provide a comprehensive framework governing the recognition of risk mitigation techniques under the Standard Formula, including requirements on effective risk transfer, commensurateness, and basis risk. **Any further guidance should remain consistent with this framework and not introduce new requirements beyond it.**

A key consideration is that commensurateness should not be interpreted as requiring symmetry in all scenarios. Proportional reinsurance arrangements often include features such as variable commissions, loss corridors, or caps, which are widely used to align incentives, mitigate moral hazard, and support sustainable risk sharing.

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These features are integral to market practice and should not, in themselves, be seen as indicative of insufficient risk transfer.

It would be valuable for EIOPA to further clarify the value and rationale of specific features in proportional reinsurance contracts. Beyond providing risk-transfer and protection to cedants, features such as variable commissions, loss corridors and loss limits can provide additional benefits, including (non-exhaustively):

- Bridging differences in the risk perspectives of insurers and reinsurers.
- Supporting more cost-efficient risk pricing and risk-sharing by aligning incentives between cedants and reinsurers
- Supporting long-term partnerships by providing reinsurance protection while reducing the likelihood of repricing or cancellation following adverse experience, thereby contributing to cedants' growth and stability.
- Facilitating access to Reinsurance capacity by making transactions economically viable for both parties.

More generally, the Annex should reflect the design of the Standard Formula as a rules-based approximation, which is not intended to capture the full economic complexity of reinsurance arrangements. Existing governance processes, including actuarial analysis, risk management, and the ORSA, already provide a framework for assessing risk transfer.

In this context, proportional reinsurance arrangements should benefit from a presumption of commensurateness, unless this presumption is rebutted by material structural features that demonstrably and significantly impair risk transfer.

Insurance Europe would also underline the need to ensure consistency between Sections 3 and 4. The treatment of commissions under Section 4 may affect the reference point against which the commensurateness assessment under Section 3 is performed. Arrangements supported by the quantitative framework in Section 3 should not subsequently be penalised under Section 4.

Neither the Opinion nor this consultation deals exclusively with non-traditional risk mitigation techniques. The proposed rules would also affect traditional proportional reinsurance arrangements, which are widely regarded as legitimate risk transfer mechanisms. Such arrangements, including cost reimbursement and profit-sharing mechanisms, have long been common market practices, including before Solvency II. These features are legitimate and important elements that help cedents reduce the overall cost of reinsurance. For example, loss caps should not be considered to materially reduce risk transfer where they only apply at very remote levels, such as beyond a 1-in-200-year event.

Insurance Europe requests that the final Annex to the Opinion be published either in September or in 2027 after the year-end 2026 reporting, with an appropriate transition period. This will enable undertakings to comply with the requirements. In general, reinsurance treaties run from 1 January to 31 December, and they are typically renewed in the fourth quarter of the year. If the final Annex is published too close to year-end, it may create uncertainty regarding the treatment of current reinsurance treaties.

Finally, **Insurance Europe continues to support a principles-based approach**. A restrictive interpretation could reduce the use of proportional reinsurance.

Q2. *Section 3.1: Description of the case. Paragraphs 3.1 to 3.5 (5000 character(s) maximum)*

The description of proportional reinsurance arrangements is useful, and it is acknowledged that certain contractual features may influence the extent of effective risk transfer in specific circumstances.

However, further elaboration is needed to ensure that such features are not interpreted as inherent indicators of reduced commensurateness. Features such as variable commissions, loss corridors, and loss caps may affect outcomes depending on their design and calibration, but do not in themselves imply insufficient risk transfer. The calibration of features such as loss caps or corridors is often aligned with solvency considerations (e.g., at confidence levels consistent with Solvency II) and therefore would not, in general, be expected to limit risk transfer in practice.

These mechanisms serve important economic functions. Reinsurers continue to bear material exposure to frequency, severity, reserve development, and volatility risks within the loss distribution. Limitations on reinsurer profit or loss typically reflect pricing and incentive alignment rather than a removal of risk transfer.

Risk transfer should therefore be assessed across the overall loss distribution, rather than inferred from individual treaty features in isolation.

It may also be helpful for the description to distinguish more explicitly between loss-sensitive and non-loss-sensitive features. The examples in paragraphs 3.4 and 3.5 are relevant because their value varies with loss experience. A fixed commission, by contrast, is constant across scenarios and does not, by itself, affect the variability of the cedant's underwriting result or reduce effective risk transfers.

Such a distinction could also contribute to the overall consistency of the Annex. Section 3 focuses on features that may reduce commensurateness because they are linked to loss experience, whereas Section 4 appears to extend similar considerations to commissions through their treatment in the volume measure. It may therefore be helpful to clarify the intended boundary between pricing and risk-sensitive features, in order to reduce uncertainty for ordinary quota-share treaties with fixed commissions and non-loss-sensitive elements.

Q3. *Section 3.2: Assessing the balance between risk transfer and capital release. Comments to the blue box. (5000 character(s) maximum)*

Insurance Europe takes note of the emphasis on aligning capital relief with effective risk transfer, as well as the references to proportionality and materiality.

Nevertheless, there is a risk that the proposed approach could be interpreted as requiring a systematic reassessment of Standard Formula outcomes at the level of individual treaties. Such an approach would not be consistent with the design of the Standard Formula as a rules-based approximation, which is not intended to fully replicate economic risk in all circumstances. Existing processes — including actuarial analysis, risk management frameworks and the ORSA — already provide appropriate mechanisms to identify and address material misalignments where they arise.

Imposing an additional commensurateness overlay could introduce conceptual inconsistencies and effectively duplicate existing governance and control processes.

In addition, the wording suggesting that, where commensurateness is jeopardised, the risk-mitigating effect should not be recognised may lead to an unduly binary application. Some degree of deviation between capital relief and economic risk transfer is inherent to a standardised framework. Where such deviation is material, it would be more proportionate to address it in a proportionate manner, with any adjustment reflecting the extent of the deviation, for example through the ORSA, rather than through full disallowance.

We would also highlight a number of considerations regarding the mechanics and consequences of the quantitative analyses. In particular, we understand that these analyses are not intended to imply a requirement for stochastic simulations as a condition for using the Standard Formula. Likewise, their outcomes should not be expected to influence the inputs to the Standard Formula, as such an approach could raise questions regarding the boundary with undertaking-specific parameters or internal model elements. If the assessment is instead intended to operate as a threshold test for recognition, the relevant materiality criteria become decisive, and it would be important that any such criteria remain principles-based and preserve sufficient flexibility for undertakings, rather than being defined in an overly prescriptive manner.

It may also be helpful to consider the implications where a proportional reinsurance treaty is not fully recognised by the cedant. In particular, where the reinsurer is also subject to Solvency II and holds capital against the assumed premiums, the outcome may result in capital being held on the same underwriting risk at different points in the reinsurance chain. Any consequence arising from a failed or partially failed assessment could therefore be calibrated in a manner proportionate to the deficiency identified.

Any further guidance should preserve sufficient flexibility for undertakings to determine when qualitative assessment is sufficient, when quantitative analysis is appropriate, and how materiality should be assessed in practice.

Q4. *Section 3.2: Assessing the balance between risk transfer and capital release. Paragraphs 3.6 to 3.15. (5000 character(s) maximum)*

The clarification that quantitative tools such as simulations or Expected Reinsurance Deficit analyses are illustrative and non-exhaustive is useful and welcome. It clarifies that undertakings are not expected to apply such analyses systematically to all proportional reinsurance treaties.

At the same time, there is a risk that these tools may become de facto supervisory benchmarks in practice. Given their sensitivity to assumptions, data quality, and model design, no single quantitative indicator can conclusively demonstrate commensurateness. Quantitative tools should therefore be considered as supportive diagnostics, rather than supervisory benchmarks. While certain structures may create limited offset effects between commissions and claims, this is not representative of typical market practice, and overall risk transfer generally remains material. Where such tools are used, any simulation should be based on the lognormal parameters underlying the Standard Formula, rather than on undertaking-specific data, in order to preserve a level playing field for undertakings applying the Standard Formula and to avoid a de facto shift towards a (partial) internal model.

In reference to the ERD, it would be more appropriate to remove "whether there is actual" before "risk transfer" in paragraph 3.12, as even contracts with a lower, but positive, ERD allow some risk transfer.

We would also draw attention to the reference treaty used in the comparison described in paragraph 3.12. In particular, it is not clear whether the capital release of the plain proportional treaty should be assessed by reference to the ceded premium before reinsurance commissions, or to the ceded premium net of such commissions. This distinction may have a material impact on the outcome of the comparison. In this respect, it may be helpful to consider using the ceded premium before reinsurance commissions as the reference, in order to maintain consistency with the proportionality assumption underlying the Standard Formula volume measure.

The interaction between Section 3 and Section 4, and the intended relationship between the two assessments, should not give rise to double-counting. The ERD metric referred to in paragraph 3.12 uses reinsurance premium net of reinsurance commissions as the denominator. For an ordinary quota-share treaty with a fixed commission, this may increase the measured expected deficit per unit of premium and therefore support the conclusion that risk transfer remains commensurate when compared with a plain proportional treaty. The same contract may nevertheless be subject, under Section 4, to an increase in the cedant’s premium-risk volume measure through the treatment of commissions. As a result, the two sections may lead to different implications for the same arrangement. The treatment envisaged in Section 4 should therefore not duplicate the commensurateness assessment described in Section 3.

In paragraph 3.13, it would also be useful to complement the last sentence by referring to stable, profitable original portfolios, where the original gross portfolio does not have significant loss potential for the cedent.

The current guidance would benefit from a clearer structure, including a hierarchy of approaches and a framework indicating when different types of analysis are appropriate, how conflicting results should be interpreted, and how inherent limitations should be taken into account.

A proportionate, tiered approach would be preferable, whereby more detailed quantitative analysis is required only where justified by the materiality or complexity of the arrangement.

Any further guidance on the methodologies and key concepts used in the Annex should remain principles-based and avoid overly prescriptive specifications.

Q5. *Please provide any comments to Section 4: Commissions in the volume measure for non-life premium risk (Q&A 1898). Paragraphs 4.1 to 4.5.(5000 character(s) maximum)*

Insurance Europe acknowledges EIOPA's intention to promote a more consistent treatment of reinsurance commissions in the volume measure for non-life premium risk, and the reference to Q&A 1898. However, the proposed approach raises significant concerns regarding legal certainty, alignment with the Delegated Regulation, and the overall coherence of the Standard Formula.

Insurance Europe requests that EIOPA reconsider the legal and calibration rationale for treating commissions as equivalent to premiums for volume-measure purposes. The Standard Formula relies on clearly defined concepts in the Delegated Regulation, including the notion of net premiums (see Article 116(5)). That provision refers explicitly to premiums for reinsurance contracts and identifies the cases in which such premiums are not deducted. Reinsurance commissions do not appear to be expressly addressed in that provision. Extending the concept of net premiums to include reinsurance commissions, whether fixed, variable or minimum, would go beyond clarification and could effectively modify the existing framework.

It is both risk-adequate and common market practice to deduct the full reinsurance premium without adding back commissions to the cedent's net premiums. Commissions that largely reflect acquisition or administration expenses are not primary drivers of premium risk volatility. Including them in the volume measure may therefore overestimate risk, particularly in the case of fixed commissions or fixed floors within variable commission structures, which remain constant across scenarios and do not increase the variability of underwriting outcomes. Such commissions are more appropriately characterised as pricing or cost-recovery components of the reinsurance arrangement than as risk-sensitive features. This should also be considered in light of Article 101(3). ORSA reporting may also be sufficient to address the expense risk, as it is only a marginal part of the premium risk volatility.

A fixed commission generally improves the cedant's financial position without increasing the variability of underwriting outcomes. The proposed treatment could therefore increase capital requirements even where the cedant's expense base and underlying claims volatility remain unchanged.

This is particularly important because the premium risk parameters of the Standard Formula were calibrated at a broad level and were not designed to require undertakings to model the detailed economics of reinsurance commission structures. Requiring standard formula undertakings to make such adjustments could impose work comparable to that of a partial internal model without its benefits, leading to disproportionate outcomes and potentially higher premium risk capital requirements, despite no reduction in economic risk transfer under a traditional quota-share arrangement.

A change to this practice could trigger widespread amendments to existing reinsurance contracts, from cedents, reinsurers, or both, resulting in considerable administrative effort without any tangible benefits to policyholders, financial stability or the insurance market more broadly. It would also run counter to the European Commission's current objective of reducing unnecessary regulatory and compliance burdens. In an extreme scenario, it could reduce the effectiveness of proportional reinsurance as a risk management tool with potential adverse effects on growth, capacity, innovation and the competitiveness of the European insurance sector.

The proposed approach may also increase operational complexity and create risks of double-counting where commission effects are considered in both volume measures and commensurateness assessments. This consideration may also be relevant in light of the interaction between Section 4 and the quantitative analysis described in Section 3. Under the ERD-based analysis, a fixed commission may support the conclusion that risk transfer remains material by increasing the measured expected deficit per unit of premium. The same contract may nevertheless lead to an increase in the cedant's volume measure under Section 4. It may therefore be helpful for EIOPA to clarify how these outcomes are intended to interact within the overall framework.

Insurance Europe therefore considers that commissions which serve to reimburse proportionate acquisition and administration costs should not be included in the cedant's volume measure. Any clarification should remain aligned with the Delegated Regulation and should not undermine the simplicity, transparency, and comparability of the Standard Formula.