Insurance Europe response to EIOPA consultation on third country reinsurance

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Part I: Supervisory Statement

General comments on the supervisory statement

- Insurance Europe welcomes the opportunity to respond to EIOPA's consultation on the draft Supervisory Statement on supervision of reinsurance concluded with third country insurance and reinsurance undertakings (the "Statement").

- While Insurance Europe recognises EIOPA's stated objective of ensuring a high-quality and convergent supervision of reinsurance from non-equivalent third country jurisdictions, it has serious concerns about the draft statement.

- Insurance Europe has summarised below the following issues that require attention and justify significant revision to the Statement. Further information on these can be found in the main body of the consultation response.

- **Clarity of objectives, scope and nature of the document**

    - It is unclear what concrete problem EIOPA is aiming to address with this Statement. The industry understands the Statement is intended to address shortcomings in the supervision of an isolated number of cases of (re)insurance failures. The choice of a supervisory statement as a tool is therefore disproportionate and overreaching.
    - As it is currently drafted, while portraying an unjustified and unproportional negative perception of reinsurance, the Statement seems to ultimately target a form of supervisory convergence in the interpretation of the existing legal text. EIOPA should reconsider its decision to issue a supervisory statement on this topic and instead use more proportionate and appropriate supervisory tools, such as the supervisory handbook. EIOPA should also prioritise dialogue and collaboration agreements with third-country authorities where it has identified concerns.
    - In the Statement, EIOPA should clarify and provide rationale which of its recommendations apply to equivalent jurisdictions, non-equivalent jurisdictions, undertakings in scope of the EU-US Covered Agreement or those subject to SII DA Art 211.

- The Statement proposes, in certain areas, to treat reinsurance purchased from all third countries, whether that third country has been deemed equivalent or not, the same. This is contrary to the Article 172 of the Solvency II Directive.
- In any event, the Statement should be clearer that the use of additional supervisory tools should be risk-based and occur only as a last resort, in the event an increase material risks is identified and causes concerns with a particular counterparty, contract or jurisdiction. The Statement should not encourage the adoption of blanket restrictions on third country jurisdictions.
- Retrocessions should be excluded from the scope, recognising their importance in diversifying risk exposure - both within reinsurance groups and externally - , and their specialised nature.
- Additionally, it is noted that the impact of EU insurers purchasing reinsurance from non-equivalent, non-UK, non-US third countries is minimal, as these jurisdictions – as well as many other – tend to adhere to IAIS's guidelines, minimising macro-level risks.
- Furthermore, EIOPA fails to spell out the role of the counterparty credit risk submodule in its concerns, as (re)insurers are already required to hold capital based on the risk of the default of its counterparties, be they reinsurers or otherwise.

- **Legal framework and interaction with equivalence decisions and international agreements**

  - The Statement sets out conservative expectations for NCAs and, by extension, (re)insurers, imposing additional burdens and potentially discouraging the use of reinsurance capacity from third countries.
  - As it stands, the Statement is essentially bypassing the Solvency II framework, including the European Commission's equivalence decisions under Solvency II. The Statement should clarify its interaction with these equivalence decisions and the EU-US Covered Agreement, and not override them. This includes recognising distinctions between equivalent and non-equivalent countries and respecting the legal effects of equivalence decisions (Dir Art 172) and international agreements (EU-US Covered Agreement).
  - In addition, the draft Statement disregards already well-established mechanisms in the Solvency II framework, which ensures that reinsurance is conducted with appropriate prudence and governance.
  - In doing so, the Statement is not aligned with the Solvency II Directive's objective. Recital 22 of the Solvency II Directive calls for a proportionate supervision of reinsurance, noting that "*the supervision of reinsurance activity should take account of the special characteristics of reinsurance business, notably its global nature and the fact that the policyholders are themselves insurance or reinsurance undertakings*".

- **Importance of the competitiveness of the European (re)insurance industry**

  - The presence of open reinsurance markets fosters competition, increases reinsurance capacity, and reduces risk concentration for insurers. This ultimately benefits policyholders through lower prices and enhances overall risk management and resilience in society.
  - Insurance Europe emphasises the potential risks of reciprocity of discriminatory policies following restricted market access for non-EU reinsurers to the EU, potentially making EU reinsurance less attractive. In an era of rising protectionism, such policies could adversely affect the effectiveness and efficiency of how EU insurers manage, transfer, and diversify risk.
  - The impact assessment should take into account both potential social impacts, such as insurance affordability an increasing level of under-insurance (protection gap), and the competitive effects on EU-based reinsurers.

- **Emphasising the benefits of cross-border reinsurance**

    - The Statement and impact assessment should be revised to highlight the importance of global market access, including achievements such as equivalence decisions and the EU-US Covered Agreement. This recognition should underscore the value that third-country reinsurance brings to closing the protection gap and improving capital allocation.

- **Consistency and clarity of EIOPA's approach**

    - The release of two papers by EIOPA within a few months - one which proposes policy options to reduce insurance protection gap (see [here]) and a second Supervisory Statement on third-country reinsurance - is surprising, as each conveys a different and potentially conflicting message on reinsurance.
    - The protection gap paper identified ways to address the protection gap with (typically third country) reinsurance being identified as a crucial element. In contrast, the draft Statement raises broad and unjustified concerns about third-country reinsurance as a whole.
    - Cross-border reinsurance and access to global capital play a key role in addressing the protection gap. Third-country reinsurers provide capacity that contributes to absorbing losses in the EU, acting as a capital injection when needed, thereby enhancing resilience. Any possible negative consequences that potentially disincentivise reinsurance should have been considered by EIOPA first in the drafting of the Statement, and then in the accompanying impact assessment.

- If EIOPA does proceed with its Statement, significant changes should be made to address the points outlined above.

Section 2: Context and objective

Please include any general comment you might have on this section of the statement

- **Insurance Europe considers that EIOPA should clarify the objectives and scope of the Supervisory Statement** – what is the rationale and the problem, as well as the dimension of the problem aimed at solving.
- The supervision of US-based reinsurers is governed by the specifics of the Covered Agreement.
- Meanwhile, reinsurers based in Bermuda and Switzerland are covered by the European Commission's equivalence decisions under Article 172 of the Solvency II Directive which prohibit, *inter alia,* the pledging of assets to cover unearned premiums and outstanding claims provisions (art.173).
- Reinsurers in the UK, despite the absence of decision on equivalence, are still aligned with Solvency II rules and can fall under Article 211 (2) of the Solvency II Delegated Regulation, which states that there is no need for collateral for reinsurers that have been assigned to credit quality step 3 under Solvency II.
- By treating these four jurisdictions, which represent almost the entirety of EU (re)insurers' purchase of third country reinsurance, the same as any other jurisdiction, EIOPA is overriding the objective of Art 172 equivalence decisions, the EU-US Covered Agreement and the Solvency II framework.
- Furthermore, if the use of reinsurance from non-equivalent jurisdictions is targeted, EIOPA should explain what concrete problems the Statement is trying to address, together with their materiality, considering EU purchase of reinsurance in other third countries is "non-material" as explained by EIOPA itself in the impact assessment (para 1.24). In addition, supervision in those jurisdictions is, in many cases, likely to be guided by the IAIS's ICPs. This means that the macro risks stemming from the use of third country reinsurance by EU (re)insurers is extremely limited.
- Finally, Insurance Europe considers that **retrocessions should be excluded from the scope of this Statement**. Retrocession is important within a reinsurance group to achieve diversification of risk and

for efficient capital management. External retrocessions by reinsurers are pursued by highly specialised risk professionals and retroceding risks is an important risk mitigation technique to diversify risk exposure. It enables reinsurers to manage and transform risks from primary markets effectively and efficiently while staying withing the limits of their risk appetite: the wider the geographical scope of retrocession, the lower the risk of accumulation in a single reinsurer and in a single jurisdiction. Through retrocessions, EU reinsurers taking on EU-authorised insurers allow global capital to absorb losses occurring in the EU, and by doing so, contribute to the resilience of the region.

Q2.1. *Please include any comment you might have on paragraph 2.1. of the document*

- EIOPA should highlight the reasons underpinning the recognition of reinsurance equivalence in Solvency II (i.e. limiting national restrictions to use cross-border reinsurance). Therefore, **EIOPA should clarify how each paragraph of the Statement is applicable to equivalent vs non-equivalent jurisdictions.**
- The paragraph should also recall that a reinsurer based in a non-equivalent third country may be recognised on own merits if its financial strength (ratings) is equal or above CQS 3 under Article 211 of the Solvency II Delegated Regulation.

Q2.2. *Please include any comment you might have on paragraph 2.2. of the document*

- The EU should reconsider the possibilities of equivalence offered by Solvency II regarding reinsurance (Article 172). While other criteria may not lead to grant equivalence in the other possible areas (i.e. group supervision and solvency calculation), global reinsurance centres with a sophisticated and mature supervisory environment should be able to be considered in an equivalence process in relation to the reinsurance area.

Q2.3 *Please include any comment you might have on paragraph 2.3. of the document*

- EIOPA should highlight that the EU-US Covered Agreement is meant to limit restrictions on the use of cross-border reinsurance. Therefore, EIOPA should systematically clarify how each paragraph of the Statement accounts for the Covered Agreement.
- Cooperation between jurisdictions can bring significant benefits to the supervision of cross-border reinsurance, as demonstrated by the EU-US Covered Agreement. Instead of suggesting the introduction of requirements, EIOPA should instead focus its efforts on exploring the conclusion of similar agreements with other jurisdictions.
- The Agreement strengthens regulatory certainty and ensures a level playing field for EU and US (re)insurers, by eliminating the imposition of any local presence and collateral requirements on a company that is not based in the same jurisdiction as the primary insurer under certain conditions. The Agreement also promotes the cooperation and exchange of information between EU and US supervisors.
- Overall, **EIOPA should not threaten the implementation of the Covered Agreement**, which benefits both the EU and the US (re)insurance markets, by issuing blanket expectations that do not consider its clauses and intent properly.

Q2.4 *Please include any comment you might have on paragraph 2.4. of the document*

- This paragraph combines different aspects: legal conditions for the authorisation of third country reinsurers to pursue business in the EU, of which there are none in Solvency II (but national provisions could apply), Solvency II conditions for the recognition of third country reinsurance in capital requirements (in particular based on creditworthiness), and the supervision by NCAs and the related observed good practices. These three aspects should be covered in different paragraphs to avoid any ambiguity.

- The introduction of national provisions is meant to be an individual choice for each EU Member State. Insurance Europe is not supportive of local measures aimed at limiting cross-border reinsurance. Where these are unfortunately already present, they were meant to reflect the local market situation at a specific point in time. Duplication in other Member States is not justified. EIOPA should not encourage the introduction of national requirements for third country reinsurers such as notification, prior authorisation or the establishment of a local branch office.
- Insurance Europe is extremely concerned by EIOPA's encouragement of barriers to reinsurance across EU member states. Again, EIOPA fails to balance the objectives of appropriate supervision and the need for reinsurance capacity to address protection gaps. Unfortunately, what EIOPA deems as a "good practice" are in fact practices that disincentivise reinsurance. "Good practice" should instead aim at ensuring that restrictions to global reinsurance are phased out to allow a greater diversification of reinsurance counterparty risk by the cedents, and more capacity to be brought at a competitive rate, not the opposite.
- Should EIOPA wish to take steps to address very specific and limited concerns regarding very specific jurisdictions, then it should focus on fostering bilateral dialogue and inter-institutional agreements with the relevant third countries.

Q2.5 *Please include any comment you might have on paragraph 2.5. of the document*

- Given the global nature of the reinsurance activity, the Solvency II Directive urges the EU institutions to conclude "*international agreements with a third country*" (recital 89) in order to "*ensure effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance*" (article 175). Those international agreements are intended to remove restrictions to cross-border reinsurance, such as mandatory collateral or localisation. The EU-US Covered Agreement is a successful reflection of this ambition and should serve as a template in other jurisdictions. EIOPA should not challenge this political commitment by the EU in Solvency II.
- The proposed uniformity of treatment of reinsurance purchased from equivalent and non-equivalent jurisdictions is contrary to Article 172 (3) of the Solvency II Directive.

Q2.6 *Please include any comment you might have on paragraph 2.6. of the document*

- The Statement should focus on its primary matter, namely cession of primary insurers to third country non-equivalent reinsurers, and the following sentence should be removed: "*however, it might be also relevant, following a proportionate and risk-based supervision and considering the specific business models, to reinsurance undertakings retroceding their risks*".
- The paragraph could also mention that mixed business models are frequent (insurance undertaking with a significant activity as reinsurance undertaking).
- Insurance Europe stresses that the retroceding of risks is an important risk mitigation technique to diversify risk exposure, which enables reinsurers to manage and transform risks from primary markets effectively and efficiently, while staying withing the limits of their risk appetite.
- Retrocession is not *per se* more exposed to risks than the primary cession of risk. In fact, the geographical scope of retrocession increases risk diversification and limits exposures to cumulative events. Through retrocessions, EU reinsurers taking on EU-authorised insurers allow global capital to absorb losses occurring in the EU, and so contribute to the resilience of the region.

Section 3a: Assessment of the business rationale for using third-country reinsurance and early supervisory dialogue

Please include any general comment you might have on this section of the statement

- Any wording that would suggest supervisory pre-authorisation is needed to purchase reinsurance must be removed.
- The use of (third country) reinsurance – and retrocession – is fully recognised by Solvency II (Art 23 of Solvency II Directive). It is not clear why a systematic "early supervisory dialogue" is mentioned in the first sub-title of Part 3. The same applies for the use of reinsurance, which is under the responsibility of each undertaking's AMSB and should not be subject to prior authorisation by supervisors.

Q3.1 *Please include any comment you might have on paragraph 3.1. of the document*

- Insurance Europe agrees with the recognition of reinsurance as an efficient risk management and diversification tool as well as a capital management tool.

Q3.2 *Please include any comment you might have on paragraph 3.2. of the document*

- The paragraph should be amended to reflect that the need for reinsurance is not only a trade-off between the factors mentioned, but also depends on the strategy at a given moment of the undertaking.
- NCAs should not hamper new/particular business models to be operated within the EEA, and must ensure that it captures these differences when benchmarking the undertaking against the rest of the market.

Q3.*3* *Please include any comment you might have on paragraph 3.3. of the document*

- This paragraph should be deleted entirely or at the least clarify that prior engagement is encouraged only in very exceptional cases (i.e. if an insurer engages in reinsurance/retrocession that deviates from the scheme of operations submitted in accordance with Article 23 SII or have obvious reason to believe that NCAs are likely to raise questions in the supervisory review process at a later stage).
- The Statement suggests that NCAs should engage in a supervisory dialogue with the undertaking "*sufficiently before the conclusion of the reinsurance agreement*". In addition to being impractical, it would also create bottlenecks and be counterproductive to expect *ex ante* involvement of NCAs in each reinsurance agreement where reinsurance solutions need to be quickly implemented. The additional burden does not serve a comprehensive regulatory purpose. It would also create legal uncertainty for (re)insurers if they receive no or inconclusive feedback from NCAs, as well as for entities looking for reinsurance cover.
- It is not realistic nor desirable to request such a dialogue systematically before the conclusion of every reinsurance agreement. NCAs should not intervene systematically in the management of insurance undertaking. As stated in § 3.1 and 3.5, it is under the responsibility of the AMSB to define and implement the reinsurance strategy and to ensure that the risk management is adequate and in line with the reinsurance strategy and policy, not of the NCAs.

Q3.4 *Please include any comment you might have on paragraph 3.4. of the document*

- In line with the above comment, the proposed recommendation is highly disproportionate and should be deleted.

Section 3b: Assessment of the Insurance undertakings risk management system regarding the use of third-country reinsurers

Please include any general comment you might have on this section of the statement.

- *your answer here*

Q3.5 *Please include any comment you might have on paragraph 3.5. of the document*

- **The following should be deleted**: "*and quantified while also including a list of the most material arrangements*" and "*that material risks associated with third country reinsurance arrangements are appropriately captured by the risk management framework*".
- **Risks associated with third country reinsurance should not be singled out for quantification in the ORSA, unless those risks are material to the risk profile of the undertaking**. Singling out specific non-material risks in this way would lead to a loss of ownership of the ORSA and could deflect attention from more material risks.
- Furthermore, insurers are required to extensively report on reinsurance in QRTs S30 and S31. This reporting should not be replicated in the ORSA.

Q3.*6* *Please include any comment you might have on paragraph 3.6. of the document*

- Regarding point a), it should be completed by "*where this is relevant given materiality and where this information is publicly available*". Materiality should be also clearly defined.
- When "*taking into account the different domiciles of its third country reinsurers, including also retrocession of risks to other third country reinsurers*" is mentioned, it is worth noting that it is not usual practice for retrocession contracts between the reinsurer and the retrocessionaire to be disclosed to the insured undertaking. It may not be possible for the insurer to obtain information on the internal risk management of the reinsurer if the information is not in the public domain. The reinsurer is unlikely to be able to share confidential internal information with ceding companies.
- Furthermore, the retrocession of risks to other (non-equivalent) third countries should not be subject to the same process as for cedents. The market of available retrocessionaires is less diverse. Reinsurers have the competence and the professional means to keep the financial strength of their potential counterparties under constant surveillance. This applies even more to intra-group retrocession arrangements.
- Regarding point b), international sanctions prohibit business relationships with certain counterparties. The risk arising from non-compliance with international sanctions is limited to an inadequate monitoring of sanction lists. **There is no clear rationale for performing a special risk assessment nor a particular relevance for third country reinsurance assessments.**

Q3.*7* *Please include any comment you might have on paragraph 3.7. of the document*

- Insurance Europe **recommends deleting the reference to potential "*special areas*" to be considered in case of liquidation and bankruptcy of the third country reinsurer** as it is unclear what EIOPA refers to here.

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  - Solvency II already provides a mechanism for assessing counterparty credit risk and given that EIOPA has not pointed out specific concerns with these rules, they should not be duplicated in a parallel system as described.
  - Insurance Europe stresses that it is not proportional to expect all insurers to perform a full analysis of the legal framework in specific third countries. This would also fall outside of the remit of the undertaking**.**
  - While Insurance Europe recognises that (re)insurers should understand the consequences of potential insolvency, winding-up procedures or recovery and resolution mechanisms, paragraph 3.7 inaccurately implies that the selection of third countries is dominated by enforceability considerations. The undertaking should focus its analysis on the qualitative elements of the relationship, such as: well-established reinsurer, geographical risk diversification, proven willingness to pay, fair behaviour, adequate governance, etc.
  - The legal consequences arising in case of insolvency are not always certain due to the lack of relevant court cases and this is also the case for domestic reinsurers. Should there be a divergence in the assessments of the third country jurisdiction applicable rules by both the undertaking and the NCA, the NCA should share with the undertaking its own legal assessment to explain and clarify how its national regulations brings more certainty than in the assessed third country jurisdiction.

- In addition, EIOPA should refer to the enforceability of collateral provisions in the countries which accept the majority of third country retrocessions (namely the US and the UK) and for countries which have been deemed equivalent under article 172 of the Solvency II Directive. This is even more necessary as § 2.5 makes it clear that "*when relevant only to reinsurance arrangements with third country reinsurers from non-equivalent countries, this is explicitly mentioned in the text*".

  - it appears that this paragraph applies to reinsurers in equivalent jurisdictions and to the extent that this sets additional requirements for reinsurers in those jurisdictions, it seems to be in contradiction with Articles 172(3) and 173 of the Solvency II Directive. Indeed, where a solvency regime of a third country has been deemed to be equivalent, reinsurance contracts concluded with undertakings having their head office in that third country shall be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with the Solvency II Directive.
  - In addition, Member States shall not require pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency regime is deemed to be equivalent in accordance with Article 172.

Q3.*8* *Please include any comment you might have on paragraph 3.8. of the document*

- Insurance Europe strongly believes that EIOPA should not address the issue of collateral in a way that can be understood as a promotion or encouragement of collaterals, whether potential or even mandatory**.**
- In fact, this would be a step back from all the discussions around collateral between the EU and the US that led to the removal of collateral requirements as part of the Covered Agreement. Such a bold statement on collateral runs directly against recent EU policy and is an unfortunate message given by EIOPA to the global supervisory community, with a significant risk of backfiring against EU players.
- The separate section on collaterals suggests that EIOPA sees collateral as a regular and commonly used tool in the supervision of third country reinsurance arrangements. This perception does not reflect the reality in the EU.
- The paragraph should rather mention that undertakings may consider that a collateral is not needed, notably because of the creditworthiness of the reinsurer (see Article 211 SII Delegated Act). In addition, the counterparty default risk calculation captures the extra capital that the undertaking has to have in order to accept the risk. Indeed, cedants' counterparty risk exposure is already measured in the

Counterparty Default Risk Module of the Solvency II Delegated Act, and this approach in itself already considers key elements such as the rating of a reinsurer and whether a reinsurer is from an equivalent or non-equivalent third country.

Q3.*9* *Please include any comment you might have on paragraph 3.9. of the document*

- The paragraph refers to the possible existence, in national laws on liquidation and bankruptcy, of power of disavowal, including powers which are "similar". This similarity might be very difficult to assess and could lead to unnecessary duplication of analysis and uncertain outcomes when dialoguing with the NCAs.
- Such reference to "similar" power of disavowal should be removed.

Q3.*10* *Please include any comment you might have on paragraph 3.10. of the document*

- The paragraph is introducing a disproportionate restriction to the contractual freedom and should be removed.
- The risk presented by a country's liquidation and bankruptcy laws where insolvency of a reinsurer is concerned cannot be mitigated through the choice of law and jurisdiction clause. Indeed, the choice of law and jurisdiction provisions in a reinsurance contract will have no effect upon the legislative regime applicable to insolvent reinsurers. More to the point, many reinsurance contracts rely on arbitration for dispute resolution, which is broadly unrelated to the applicable insolvency regime.
- The domicile of the reinsurer is the key determining factor in relation to the insolvency laws applicable. The choice of law is not relevant here. Some third country jurisdictions are acknowledged centres of excellence for reinsurance (e.g. Bermuda, UK and Switzerland). The laws and the judicial systems of these countries may be more suitable and adapted to the global nature of the reinsurance market.
- Furthermore, by encouraging undertakings to change their choice of law and jurisdiction away from established third party jurisdictions is likely to have unintended consequences because only a small number of jurisdictions have mature legal frameworks in relation to reinsurance. Moving away from these jurisdictions will add greater uncertainty to the reinsurance contracts.
- In addition, this restriction could result in issues for smaller undertakings in the EU to conclude contracts, as it might be difficult – if not impossible – to negotiate this clause in contracts with big international groups.

Q3.*11* *Please include any comment you might have on paragraph 3.11. of the document*

- Please refer to comments on paragraph 3.7.
- Additional requirements for reinsurers in equivalent jurisdictions contravene Article 172(3) and 173 of the Solvency II Directive. Member States shall not require pledging assets to cover unearned premiums and outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency regime is deemed to be equivalent in accordance with Article 172.
- In general, the paragraph should better define what "*acting in case creditworthiness deteriorates*" implies for the NCA and for the undertaking.
- When defining its expectations, the paragraph should better balance the advantage of early actions and the detrimental effects of actions because of their pro-cyclical impacts. There is a need to evaluate the impact of immediate measures on the counterparties to determine whether these measures would eventually improve or deteriorate the situation of the counterparty.
- Furthermore, to reiterate the point made in relation to paragraph 3.8 above, EIOPA should not address the issue of collateral in a way that can be understood as a promotion or encouragement of collaterals.

- The final line of the paragraph, referring to collateral and ring fencing, is unfortunately promoting collaterals as a standard practice. Such reference risks to push for an overly conservative approach by NCAs, leading to the systematic use of collateral and should be deleted.

Q3.*12* *Please include any comment you might have on paragraph 3.12. of the document*

- The scope of this paragraph is unclear: are assessments supposed to be carried out prior to entering into each and every reinsurance contract including facultative reinsurance? (i.e. reinsurance relating to specific risks insured by the insurance undertaking?)
- The sheer number of transactions in markets, particularly the "direct and facultative" market would render this burdensome if that was the case. If the intent is for this assessment to be carried out prior to putting a reinsurer onto a panel of reinsurers acceptable to a particular undertaking (for example) which can be used on a repeat basis, this should be clarified.

Q3.*13* *Please include any comment you might have on paragraph 3.13. of the document*

- There is no need to create a separate process to assess material risk exposure from a third country reinsurer, as it is an assessment that should already take place for both EU and non-EU reinsurers.

Q3.*14* *Please include any comment you might have on paragraph 3.14. of the document*

- Other relevant source of information, such as the existence of a supervisory dialogue and/or agreements (Memorandum of Understandings) between supervisors, should be added.

Q3.*15* *Please include any comment you might have on paragraph 3.15. of the document*

- The wording should be reviewed to clarify that the rating is only relevant for the recognition of reinsurance arrangements with third country reinsurers <u>from non-equivalent jurisdictions</u> (underlined wording to be added in the paragraph), in accordance with Art.211 of the Solvency II Delegated Act.
- In any case, it is already normal practice for insurance undertakings to assess the impact of the downgrading of a reinsurer.

Q3.*16* *Please include any comment you might have on paragraph 3.16. of the document*

- In case of group structure, this analysis is performed as a central service in the head office. For this reason, this type of structure should be taken into consideration by the supervisory authority.
- The following sentence "*in case the NCA is of the view that the reinsurance agreement provides none or only partial risk transfer*" gives a lot of discretion to the NCA and could be understood as a blanket restriction.
- Similar to the comment on point 3.7, this view should be documented and shared with the undertaking, as part of the on-going supervisory dialogue, with an opportunity for the insurer to justify and avoid any further measure.

Section 3c: Assessment of the reinsurance agreement

Please include any general comment you might have on this section of the statement.

- N/A

Q3.*17* *Please include any comment you might have on paragraph 3.17. of the document*

- The wording of the paragraph should be changed to reflect the fact that different elements may be considered as part of good risk management, depending on the specific case under consideration, and para 3.18 should be redrafted to say "*In such an assessment insurance undertakings may consider*".
- Paragraph 3.17 invites undertakings to assess their reinsurance contracts' compliance with articles 209-211 of the Delegated Act, as part of their reinsurance risk management. However, the points listed in 3.18 include elements which are not specified in Articles 209-211 of the Delegated Regulation.
- For example, the recognition of the reinsurance contract only depends on whether collateral is in place *if the third country reinsurer is not rated*. Similarly, there is *no requirement* for a termination clause for recognition of a reinsurance contract.
- As for external reinsurance and retrocession, intragroup reinsurance and retrocession allows insurers and reinsurers to manage and diversify their risks efficiently. Restrictions on cross-border reinsurance transactions, either external or intragroup, would reduce underwriting capacity and make insurance more expensive.

Q3.*18* *Please include any comment you might have on paragraph 3.18. of the document*

- Please refer to comments to 3.17 and 3.6.a.
- Downgrade only plays a role in the recognition for reinsurance from a non-equivalent jurisdiction – this should be made clear with this precision: "*such as the breach of the local solvency requirement or a material deterioration of the financial situation of the third country reinsurer (including its downgrade <u>for non-equivalent jurisdictions</u>)*".Furthermore, an insurance undertaking is generally not informed of retrocession arrangements by its reinsurers, which is a confidential contractual information.
- In addition, the "completeness" of the collateral may be difficult to assess or obtain until claims are fully settled. In the early stage of claims life cycle, the IBNR may represent the major part of the amount and the estimate can be a matter of discussion in itself.
- The paragraph should also clarify what is meant by a "*clearly established claims' hierarchy…that does not depend on …third-country (bankruptcy) legislation*". Or it should be deleted.
- Please also refer to the comments to 3.8 and 3.11 by which any reference to collateral might result encouraging a conservative approach by NCAs. The final sentence of 3.18 should be deleted.

Q3.*19* *Please include any comment you might have on paragraph 3.19. of the document*

- Please refer to the answer to 3.12. (Is the expectation that this assessment be carried out prior to entering into each and every contract? If so, this is likely to be overly burdensome and impractical.)

Q3.*20* *Please include any comment you might have on paragraph 3.20. of the document*

- N/A

Section 3d: Tools to mitigate any additional risks

Please include any general comment you might have on this section of the statement.

- The Supervisory Statement should be clearer that additional tools should only be used as a last resort, in the event of specific identified concerns with a particular counterparty, contract or jurisdiction.
- Furthermore, this section does not explain how these additional tools are completing the already wide range of tools offered by Solvency II to ensure adequate measurement and supervision of cedants' exposure to reinsurance.

Q3.21 *Please include any comment you might have on paragraph 3.21. of the document.*

- The wording "(or be requested by the NCA)" should be replaced by "*(or be recommended by the NCA as part of the supervisory dialogue with the undertaking)*". The Statement should not pre-empt the content of the dialogue between the NCAs and the undertakings.
- The location of the collateralised assets (if applicable) should not necessarily be in the same jurisdiction as the undertaking. The undertaking and the reinsurer may find better expertise and experience in a financial centre with specific experience with this kind of arrangement.
- A commutation is also not necessarily beneficial since it requires to setting the claims amount at a point in time whereas volatility will remain. This may create dispute and increase the uncertainty about the probability to recover any amount while increasing the cost for each party because of arbitral/judicial proceedings.
- Furthermore, NCAs do not usually get involved at the level of the individual reinsurance contract, and so this should be referred to as a general tool, if at all.

Part II: Impact assessment

General comment

- The impact assessment fails to consider the potential negative implications of the Supervisory Statement if it leads directly or indirectly to a decrease in reinsurance purchase by EU insurers. The benefits of cross-border reinsurance need to be highlighted, as well as the importance of phasing out restrictions to global reinsurance to increase the take-up rate of reinsurance.
- When EU-based insurers cede risks outside of the EU, this means that the world contributes to absorbing losses occurring in the EU. EIOPA cannot deplore on the one hand the natcat protection gap, and deter EU insurers to use 3rd-country reinsurance on the other. Access to global capital will be needed to insure peak risks in the EU. Conversely, exposures will become concentrated in the EU, if capacity is available at all, especially if reinsurance purchase is made more difficult from well established (but third country) markets such as the UK.
- Furthermore, the EIOPA Statement should further consider the implications of the EU-US Covered Agreement. Threatening the implementation of the Covered Agreement, which benefits both the US reinsurers doing business in the EU and the EU reinsurers doing business in the US, would be highly detrimental to the European insurance sector.

Please include any comment you may have on Section 1.1. Procedural issues and consultation of interested parties

- N/A

Please include any comment you may have on Section 1.2. Problem definitions

- N/A

Please include any comment you may have on Section 1.3. Objective pursued

- The concept of "*good practices in supervision implemented by some NCAs*" is very subjective. As explained above, there are some significant differences between domestic markets in the EEA, and requirements can also vary based on the lines of business. Therefore, it seems difficult to suggest a "one fits all" solution for an entire market, with the same level of efficiency in all sectors.

Please include any comment you may have on Section 1.4. Policy issue and options

- The impact assessment should mention that the benefit of this Supervisory Statement is limited.
- It is noted in §1.16 of the impact assessment, of the total European market reinsurance with reinsurance undertakings from third countries represent 35.15% of total recoverables, of which 16.76% for reinsurers from non-equivalent third countries.
- Furthermore, the development of new technologies (e.g. AI, IT solutions), climate change, energic transition – among other developments – will result in new risks. The capacities and know-how from third countries reinsurance markets could be significant or even crucial for EU economy sustainability.
- It is surprising to note that a 35% market share of reinsurance undertakings from third country reinsurers is not considered by EIOPA as a significant market share in terms of impact.
- The paragraph 1.17 is incomplete. If collateral is becoming mandatory, then it will increase the cost of administering the reinsurance arrangement because of setting-up the collateral "account" and its monitoring.
- Mandatory collateral will also restrict the offer of reinsurance or increase its price because the assets being collateralised will not allow for a sufficient return to the reinsurer, this will be factored in the price.
- When considering the total offer of reinsurance, the capacity for collateralised reinsurance is only a part of the total capacity available, therefore the proportion of reinsurers willing or able to collateralise their liabilities will have a stronger negotiation power for increasing their price.
- As shown in Graphic 2, most of these exposures concern the UK and the US, whereas exposures to other third countries tend to be very limited and even "*non material*" to quote EIOPA (1.24). The same is also true for EU reinsurers (Graphic 3). This means that the quasi entirety of EU (re)insurers' purchase of third country reinsurance comes from reinsurers considered, legally or de facto, well-regulated and well-supervised.

Please include any comment you may have on Section 1.5. Evidence

- N/A

Please include any comment you may have on Section 1.6. Comparison of options

- N/A

Please include any comment you may have on Section 1.6. Comparison of options

- N/A

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.