RAB response to EC consultation on the Solvency II draft Delegated Regulation

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Key messages

To maintain Europe's leadership in global reinsurance, SII must remain risk-based and free of non-economic barriers. We urge the Commission to consider the following amendments (order does not reflect an order of priority).

1. Risk-mitigation techniques:

- **Avoid impacting 99% of reinsurance contracts** with an unworkable demonstration of transfer of risk in Articles 210 to 212 for both proportional and non-proportional (NP) reinsurance.
- For instance, it is unclear whether NATCAT NP reinsurance for motor insurance would qualify as RMT under the proposed changes.
- These substantial changes are the negation of a functioning and competitive EU reinsurance market. in contradiction with Recital 18's stated objective to improve the recognition of NP reinsurance. A proper impact assessment is needed before any change is made.

2. ADCs:

- Improving the treatment of NP reinsurance in the standard formula is a topic under discussion since the 2018 Solvency II review. The proposal put forward could work, subject to some changes.
- We kindly call on the Commission to consider the technical arguments and examples put forward by the RAB on solutions to current challenges (see Annex).

3. Group minimum SCR:

- Exercise the empowerment given in the Level 1 to **remove the double-counting of third-country risks in the group minimum SCR**, which affects EU-based international groups due to their global presence and vertical structure.
- Clarifying this point is essential to ensure European groups can compete and grow globally, whether organically or through acquisitions, as the non-economic double-counting of third-country risks in the Group minimum SCR is not part of any other regime in the world and would unfairly disadvantage EU-based groups.

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4. **Risk margin:**

- **Eliminate the 50% floor** to the new calibration of the risk margin, as it unduly restricts the effectiveness of the lambda in supporting long-term guarantees—the very objective of the review.
- While falling short of a justified level of 92.5%, the introduction of a lambda at 96% is welcome, but the risk margin will remain larger than in other jurisdictions, leading to a competitive disadvantage for European insurers.

5. **Internal models:**

- **Maintain the recognition of contingent capital instruments in internal models**. This proven capital shield, used to protect reinsurers against e.g. extreme NATCAT losses, can be properly reflected in internal models.
- Address the ambiguity in terms of the standard formula estimate to be provided by internal model users. Clarify that the format, content, and reporting channel should be agreed directly between the NCA and the undertaking, independently from the RSR and SII QRTs processes by default – unless otherwise requested by the supervisor.

6. **EPIFP:**

- **Delete the reference to EPIFP** in the group capital availability assessment in Article 330.
- The EPIFP is an integral component of the reconciliation reserve and should be treated like other own funds included herein, i.e. as always available at group level without separate availability assessments.
- Changing the treatment of EPIFP would eliminate a key incentive to provide long-term guarantees.

7. **VA:**

- Groups should be permitted the option to apply the same credit spread sensitivity ratio (CSSR), per currency, for entities of a subgroup or group, calculated based on the subgroup's or group's asset and liability portfolios.

8. **Reporting:**

- The ORSA covers **sustainability risks**, if material, and measures to address these risks, and thereby should include the sustainability risk plan reporting. No other reports, such as the proposed SFCR requirement, should duplicate these reporting requirements.
- **RSR:** Exceptions for reporting should consider complexity criteria to assess the overall risk profile. The three-year frequency would be aligned with the European Commission's strategy to reduce reporting burdens.

Further detailed responses to the EC's proposals are included in the Annex below.

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Annex – RAB proposals

1. Risk Mitigation Technique (RMT) – Transfer of Risk

The idea that treaties should "closely mirror" the underlying insurance policies "under a comprehensive set of scenarios" ignores the reality of the market and negate the ability of reinsurers to price the risk, negotiate terms and conditions, or structure holistic reinsurance programs where some layers inure to the benefits of others. If a reinsurance treaty has to be a clone of the underlying insurance policies to be recognised in Solvency II, only one reinsurance contract would be admissible by supervisors leading to the end of the competition in the reinsurance market.

This flawed definition, together with the creation of a bureaucratic "supervisory satisfaction regime", are likely to give rise to gold-plating and unlevel-playing field across the single market, significant delays in already overly busy renewal seasons, early termination of treaties and non-renewals unless RAB's recommendations are considered.

Article 210 - Effective Transfer of Risk

The current framework has proven to work well. It is not justified to make the use of reinsurance, whether proportional or non-proportional, more difficult and subject to a new "supervisory satisfaction regime" which will give rise to contractual uncertainty, delays, inconsistencies with the International Financial Reporting Standard (IFRS accounting standards), and unlevel-playing field. Taken at face value, the proposed changes to Article 210 to 212 would lead to the termination of a free and competitive reinsurance market in Europe, as competing on prices and reinsurance clauses would bar the recognition of the resulting treaty under Solvency II.

The RAB does not support the introduction of EIOPA overly complex definition of material basis risk in art.210 (3a). This definition, which creates a quantitative "mirroring test", is inappropriate for 99% of reinsurance contracts, including the most vanilla Quota Share arrangements. The RAB agrees that when a reinsurance contract is in place for a given portfolio, an adverse change of Net Asset Value (NAV) for the cedent should give rise to reinsurance recoveries in scenarios with confidence level at and around 99.5% to justify a reduction of the Solvency Capital Requirement (SCR). However, a reinsurance contract will never be just the "mirror" of the underlying insurance policies due to traditional features like cedent's retention of risk, reinsurance commissions, limits, the inuring benefit of lower layers in a reinsurance tower, exclusions. These features should not raise prudential concerns – they are the trademark of a vibrant and competitive market where reinsurers are able to price the risk and set good risk management terms and conditions freely.

Therefore, the wording of 3a might bar the recognition of a valid RMT even where there is an effective transfer of risk. An apt and principle-based definition of material basis risk is already provided for in Article 210(3) such that the new paragraph 3a is not necessary. If kept, it should at the very least be amended to say that:

> *"the changes in value of the exposure covered by the risk-mitigation technique ~~closely mirror~~ is responsive to the changes in value of the risk exposure of the undertaking under an appropriate ~~comprehensive~~ set of risk scenarios, including scenarios that are consistent with the confidence level set out in Article 101(3) of Directive 2009/138/EC".*

It is essential that considerations on basis risk are not excessively restrictive and cumbersome so that the impact of risk transfer instruments can continue to be recognised in accordance with the essence of a risk-based regime and without creating too much of a gap with IFRS 17 accounting standards.

In addition, it should be clarified that the commensurate concept relates to the SCR as Article 210 is about SCR calculations – the impact of reinsurance contracts on own funds is a separate topic linked to best estimate calculations of reinsurance recoverable on the asset side. In Article 210, the RAB does not understand the reference to available basic own funds as it is not mentioned in the EIOPA opinion on the use of risk mitigation techniques (July 2021), published after EIOPA advice on the 2020 review, and the RMT provisions in the L2 are with respect to the SCR credit for reinsurance.

Article 211 - Risk-Mitigation techniques using reinsurance contracts or special purpose vehicles

The RAB does not see the new provision art. 211(7), second paragraph, as meaningful nor appropriate. Firstly, the RAB does not understand what a "contractual arrangement's behaviour" is or means.

Reinsurance is based on the principles of "follow the settlement" and "utmost good faith" (uberrima fides), whereby claims paid by the insurer and covered by a reinsurance contract will give rise to reinsurance recoveries. The RAB expresses concern about the introduction of vague concepts such as "contractual arrangement's behaviour," considering them to lack clear practical meaning within the regulation.

Secondly, terms and conditions almost always differ between the reinsurance contract and the underlying insurance policies. Reinsurance contracts are always bespoke, and each clause are negotiable in a competitive market. There are, in addition, standard exclusions e.g. for wars, nuclear events or communicable diseases.
In summary, the new second paragraph in Article 211(7) is not compatible with a functioning and competitive reinsurance market – it should be deleted.

In conclusion, given the unworkable definition of "transfer of risk" and the creation of a "supervisory satisfaction regime", the amendments will create significant legal risks and legal costs. Treaties may be terminated or not renewed. The already overly busy 1.1 renewal season might be derailed by significant delays.

Proposed amendments regarding RMT in the standard formula and basis risk

Recommendation: The RAB calls for the following amendments to the proposed changes to Articles 210 to 212.

- ***Article 210*** *is amended as follows:*

  - ~~*The following paragraph 3a is inserted:*~~
    ~~*'3a. A risk-mitigation technique shall only be considered not to result in material basis risk where the insurance or reinsurance undertaking can demonstrate to the satisfaction of the supervisory authority that both of the following conditions are met:*~~
      ~~*(a) the exposure covered by the risk-mitigation technique is sufficiently similar in nature to the risk exposure of the undertaking; and*~~

      ~~*(b) the changes in value of the exposure covered by the risk-mitigation technique closely mirror the changes in value of the risk exposure of the undertaking under a comprehensive set of risk scenarios, including scenarios that are consistent with the confidence level set out in Article 101(3) of Directive 2009/138/EC.'*~~

- The following paragraph 6 is added:

  '6. ~~The undertaking shall be able to demonstrate to the satisfaction of the supervisory authority that the transfer of risk is effective and that any reduction in the Solvency Capital Requirement or increase in available basic own funds resulting from the risk transfer arrangements is commensurate with the actual change in risks that the undertaking is exposed to.~~

  The Solvency Capital Requirement ~~and available basic own funds~~ shall reflect the economic substance of the contractual arrangements governing the risk-mitigation techniques. When calculating the Basic Solvency Capital Requirement, insurance or reinsurance undertakings shall only take into account risk-mitigation techniques as referred to in Article 101(5) of Directive 2009/138/EC where ~~the insurance or reinsurance undertaking can demonstrate to the satisfaction of the supervisory authority that~~ all of the following conditions are met:

  (a) the contractual arrangements governing the risk-mitigation technique result in an effective transfer of risk;
  (b) the reduction in the Solvency Capital Requirement ~~or increase in the available basic own funds~~ is commensurate with the extent of transfer of risks stemming from the contractual arrangements; and
  (c) the Solvency Capital Requirement appropriately reflects any risk arising from the risk-transfer process';

- ***Article 211** is amended as follows:*

  - ~~b)~~ the following paragraph 2a is inserted:

    '2a. Where insurance or reinsurance undertakings transfer underwriting risks to a scheme based on reinsurance conducted or fully guaranteed by the government of a Member State acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, the scheme shall be considered as a reinsurance counterparty within the meaning of paragraph 2 of this Article.'

  - ~~(c) the following paragraph 7 is added:~~

    ~~'7. For the purposes of Article 86 and Article 210(3), undertakings shall consider basis risk arising from a currency mismatch to be material where the exposure covered by the reinsurance contracts or special purpose vehicles is denominated in a different currency than the risk exposure of the undertaking, unless the currencies involved are pegged within a sufficiently narrow corridor or the fixed exchange rate is provided in the reinsurance contract.~~

    ~~For the purposes of Article 210(3a), point (b), where insurance and reinsurance undertakings transfer underwriting risks using reinsurance contracts or special purpose vehicles, they shall identify whether the contractual arrangements governing the risk-mitigation techniques behave differently from their insurance policies under a comprehensive set of risk scenarios reflecting differences in terms and conditions.';~~

- ***Article 212** is amended as follows:*

  - *~~(b) the following paragraphs 6 to 9 are added:~~*

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~~'6. For the purposes of Article 210(3a), insurance and reinsurance undertaking shall not take into account other items of the balance sheet, unless there is a continuous and consistent connection between such other items and the risk exposure of the undertaking.~~

~~7. For the purposes of Article 210(3a), point (a), insurance and reinsurance undertakings shall take into account at least the type and terms and conditions of the instruments or arrangements involved, and the rules governing the markets where their prices are quoted, or which provide the data for their valuation.~~

~~8. For the purposes of Article 210(3a), point (b), insurance or reinsurance undertakings shall include, as part of the comprehensive set of scenarios, at least all scenarios considered in the relevant modules or sub-modules of the standard formula, and shall take into account all of the following: (a) the degree of symmetry among exposures covered by the risk-mitigation technique and the risk exposures of the undertakings; (b) any non-linear dependencies under each scenario; (c) any relevant asymmetry of the behaviours of the exposures covered by the risk-mitigation technique and the risk exposures of the undertakings, in case of sub-modules comprising upward and downward stress factors; (d) the level of diversification of each exposure of the risk-mitigation technique and of the undertakings; (e) any relevant risks that are not captured explicitly in the standard formula; (f) the whole distribution of pay-outs applicable to the risk-mitigation technique.~~

~~9. For the purposes of Article 210(3a), where the terms and condition of a risk-mitigation technique specify a cap on the maximum loss protection as a percentage of the initial exposure, insurance or reinsurance undertakings shall only apply the assessment of the materiality of basis risk to the part that is covered by the risk-mitigation technique.';~~

2. Treatment of Adverse Development Covers (ADCs)

Non-proportional (NP) reinsurance is an important risk mitigation instrument for the non-life sector and a crucial tool for smaller and medium sized companies to manage peak risk.

The RAB has always advocated for a more risk-sensitive treatment of NP reinsurance in the standard formula and has engaged with EIOPA for many years to provide credible ideas and workable solutions.

Recommendation: The RAB supports the EC's intention to better recognise ADCs in the Delegated Regulation, through an amendment to Article 117 and 148, paragraphs (4) and (5). However, the RAB recommends changing the proposal to make it a real solution.

Here are the current challenges of the proposal:

1. **Challenge:** The proposed formula (below) is not sufficiently clear and might not appropriately reflect the risk transferred by the ADC.

$$Adjust_{(NP,s)} = max\left[0\,;\, \frac{V_{(\text{net,res,s})} \cdot 3 \cdot \sigma_{(\text{res,s,annex})} - ADC_{(\text{rec,s})} \cdot \text{C} \cdot \text{Pr} - Par}{V_{(\text{net,res,s})} \cdot 3 \cdot \sigma_{(\text{res,s,annex})}}\right]$$

   There are two concerns below, (a) and (b):

(a) Higher Premiums for the ADC lead to a lower NP-Adjustment Factor and thus to a higher capital relief. However, the capital relief should lower with higher reinsurance premium Par. Therefore, Par should be added instead of subtracted.

Let's assume the following two reinsurance structures where (with identical V_net and sigma_res):

Structure 1:

- $ADC_{(rec,s)}$ *(i.e. the risk cover)* is equal to 10
- *Par* is a positive amount equal to 5

Structure 2:

- *ADC(rec,s) (i.e. the risk cover) is equal to 15 and*
- *Par is a positive amount equal to 0*

According to the proposed formula, both reinsurance structures will lead to the same capital relief even though the economic capital relief should be lower for the first structure:

(b) The definition of Par is not sufficiently clear, in particular it should also consider the cession rate C to be consistent to $ADC_{(rec,s)}$. This could either be clarified in the definition of Par, or the cession rate C should be applied to Par as well.

Solution: The formula shall be aligned with 5.296 in the EIOPA note of 2020, i.e. to deduct *Par* from *ADC(rec,s)*

$$Adjust_{(NP,s)} = max\left[0\,;\,\frac{V_{(\text{net,res,s})}\cdot 3\cdot\sigma_{(\text{res,s,annex})} - \left(ADC_{(\text{rec,s})} - Par\right)\cdot \mathrm{C}\cdot \mathrm{Pr}}{V_{(\text{net,res,s})}\cdot 3\cdot\sigma_{(\text{res,s,annex})}}\right]$$

2. <u>Challenge:</u> The scope of application of the current draft formula is unnecessarily restrictive as it is limited to:

(a) single-line ADCs and
(b) ADCs with a predefined minimum capacity and comparably low attachment points.

These restrictions create operational challenges, increase complexity as outlined in the examples below and make ADCs structures unnecessarily expensive and thus less attractive. With the restriction to single line ADCs only a few selected structures will be covered as multiline ADCs are current standard market practice. This jeopardises the policy objective to better reflect the risk-mitigating effect of ADCs in the capital requirements. It is also not required from a prudential perspective as outlined in the **solution** below.

Specific technical challenges with respect to the restriction on attachment points:

- **Case 1**: Let's assume that parts of the best estimate reserve are paid out (and no reserve increase is recorded), $V_{(net,res,s)}$ decreases, and the condition is no longer met.
- **Case 2**: Let's assume that the attachment point has been set just below the product of $V_{(net,res,s)}$ the sum of 1 and $\sigma_{(res,s,\ annex)}$ and at the next point in time when the SCR is calculated no payments have been performed but there is a positive development of the reserves (i.e. $V_{(net,res,s)}$ decreases), which leads to the fact that the attachment point does not fulfil the above requirement.
- **Case 3**: Let's assume that the attachment point has been set just above the product of $V_{(net,res,s)}$ the sum of 1 and $\sigma_{(res,s,\ annex)}$ and at the next point in time when the SCR is calculated no

payments have been performed but there is a negative development of the reserves (i.e. $V_{(net,res,s)}$ increases), which leads to the fact that the attachment point does fulfil the above requirement.

Solution

Both from a competitiveness perspective, as well as from a prudential perspective, it should be possible to recognise a broader variety of ADC structures.

For this purpose, the RABs strong preference would be that the following proposed restrictions in Article 107a – 4 should be removed completely.

~~(a) each adverse development cover is only applied to one specific group of policies with the same risk characteristics within the same segment, and has a separate and distinct attachment and detachment point;~~

~~(b) the attachment point referred to in point (a) does not exceed the product of V(net,res,s) referred to in point (a) of the second subparagraph and the sum of 1 and σ(res,s, annex) referred to in point (b) of that subparagraph~~

From a prudential perspective there is no need to restrict the recognition to single line ADCs as long as it is ensured that the capital relief is commensurate with the risk relief. Using appropriate weighted averages of σ(res,s,annex) using V(net,res,s) as weights in the formula above will allow an actuarial sound reflection of the underlying risk.

Allocation to line of business level can be done proportionate to the underlying volume measures using established actuarial methods. However, we would like to note that the relevant metric to assess prudency should not be the capital requirement per line of business but the SCR for non-life premium and reserving risk module

We also disagree with the argument that a recognition of the ADC may not be prudent, due to the fact that a cover may be exhausted by an adverse development in one line, leaving the other line partially uncovered. This is only the case if the diversification is not considered appropriately, and the capital relief is not calculated based on an appropriate actuarial method considering the structure of the ADC. It is the responsibility of the risk management function and the actuarial function to ensure a proper application in the SCR and to highlight material deviations both in the actuarial function and Own Risk and Solvency Assessment (ORSA) report. Given these multiple layers of prudency, we consider this requirement overly cautious.

Alternative Solution

The preferred option for 4(a) and 4(b) would be to be removed completely as outlined above. Another but less preferred option would be to

- 4(a) Include a reference that for multiline covers a weighted average of $\sigma_{(res,s,annex)}$ using $V_{(net,res,s)}$ as weights in the formula above should be used (already discussed by EIOPA) instead of 4(a).
  - This weighted approach would be a reflection of the diversification between the lines and ensures that capital relief is commensurate with the risk relief, i.e. that material basis risk is avoided.
- 4(b) Restrict the capital relief to those ADC structures that fulfil the requirement on the attachment point at the inception of the contract.

3. <u>Additional items for simplification</u>

- It seems unclear whether a prudency factor is needed if *Pr* (prudency factor) is set to 100% in level 2 regulation. We suggest simplifying and removing this factor.
- We seek clarity whether the R(cs) factor defined in Article 107a 5d) is referring to the limit of the ADC cover. This might be worded simpler.

3. Group Minimum SCR Calculation

The group supervision of (re)insurers should be free from double-counting of third-country risks to prevent an undue expansion of the group SCR floor, which would threaten the management of internationally active EU reinsurers and put them at a competitive disadvantage with the rest of the world.

Given the significance of the business written in third countries by reinsurers, the RAB is extremely concerned that the European Commission (EC) proposal stayed silent on the double counting in the calculation of the minimum of the consolidated Group SCR in their amendments to Article 230 of the Directive.

The non-economic double-counting of third-country risks in the Group minimum SCR has no parallel anywhere in the word (including in the UK, see section 11.3 "Group supervision" of the Prudential Rulebook).

In general, the concept of a Group minimum SCR does not exist, whereas the existing Minimum capital requirements give flexibility to avoid non-economic double counting (e.g. in Bermuda where the minimum capital requirement should be covered with total capital and surplus, see Paragraph 19 of Insurance Group Supervision Rules 2011).

The EC should exercise its empowerment, provided for in Article 234 of the Directive, to specify the application of Article 230 "reflecting the economic nature of specific legal structures". Internationaly active EU reinsurers are often required by local supervisors to establish insurance subsidiaries and holding companies in third countries, themselves owned by EEA entities. Due to this vertical structure of participations, the third-country minimum capital requirements may be counted multiple times, while the true economic risks should be counted only once. This principle should be affirmed in the level 2 regulation.

Recommendation: The RAB recommends the addition of a recital after recitals 30 and 31 and the creation of a new Art 314a:

New Recital 31b:

> *"When calculating the minimum consolidated group Solvency Capital Requirement, it should be ensured that risks and exposures from related third-country insurance and reinsurance undertakings are only captured once in the calculation to avoid any double counting. Capital would need to be held only once since when a risk disappears from the group (e.g. entity sold, policy stopped, risk mitigated, insurance event happened, etc.) it disappears from all entities no matter how the group is structured in terms of holding structures."*

New Article 341a:

> *"Where applicable, the minimum consolidated group Solvency Capital Requirement determined in accordance with the requirements set out in the second subparagraph of Article 230(2) of Directive 2009/138/EC shall be the sum of amounts referred to in points (a), (b) and (c), unless the participating undertaking can demonstrate to the satisfaction of the supervisory authority that the risks borne by these related third-country insurance and reinsurance undertakings are already taken into account in the contribution of another insurance and reinsurance undertaking established in the EEA for an equivalent amount in (a) or (b)"*

4. Risk Margin

The proposed changes to the risk margin are strongly supported, particularly the reduction of the cost of capital to 4.75% and the introduction of a Lambda factor. While the RAB welcomes the reduction of the lambda to 96%, level-playing field concerns remain high considering that EU reinsurers are competing with jurisdictions that have lower risk margin or no risk margin at all.

The 50% floor on the Lambda parameter contradicts the Level 1 objective (Recital 41) to reflect the time dependency of risks and reduce the risk margin for long-term liabilities.

Recommendation: Remove the 50% floor to ensure full alignment with the Directive and lower the 96% lambda parameter to 92.5%.

5. Internal model's Contingent Capital and Standard Formula Reporting

Internal models (IMs) are at the core of Solvency II and of the competitive edge of EU-based international (re)insurers. These approved and heavily supervised models enable the management of EU companies to efficiently allocate capital to their business lines based on their true economic risk profile. Introducing artificial bias by reference to the standard formula would undermine one of the most significant risk management achievements of Solvency II.

Particularly, the derecognition of capital contingent instruments is unfounded as these proven capital protection solutions can be accurately reflected in internal models and are effective in shielding reinsurers against tail events like natural catastrophes.

Recommendation: The RAB urges the EC to avoid introducing the proposed change to Article 235.

The RAB recommends to clarify the wording of Article 311(2) (b) and considers that the reporting of a standard formula estimate should be done by (re)insurers using an internal model in a manner that addresses the individual needs of their respective National Competent Authorities (NCAs) and reflects the fact that NCAs, in their approval processes of the IM, recognise the limitations of the standard formula to assess the company's actual risks. Therefore, the format, content and reporting channel should be agreed directly between the NCA and the undertaking, independently from the Regular Supervisory Report (RSR) and Solvency II Quantitative Reporting Templates (QRTs) processes by default – unless otherwise requested by the supervisor.

Recommendation*:* The RAB proposes the following wording to Article 311(2) (b), with amendments in tracked changes:

"an estimate of the undertaking's Solvency Capital Requirement determined in accordance with the standard formula, pursuant to Article 112(7) of Directive 2009/138/EC, in a format agreed with the national competent authority ~~where the supervisory~~ if that authority requires the undertaking to provide that estimate in the regular supervisory report ~~pursuant to Article 112(7) of Directive 2009/138/EC~~;"

6. Reference to EPIFP in the Group Capital Availability Assessment

The EC proposal introduces a specific reference to the expected profit included in future premiums (EPIFP, Article 70(2) of the Level 2) in the group capital availability assessment in Article 330 of the Level 2.

The EPIFP is an integral component of the reconciliation reserve and should be treated like other own funds included herein, i.e. as always available at group level without separate availability assessments. This is consistent with Article 70 (3) of the Level 2 which excludes an assessment of the features of the assets and liabilities that are included in computing the excess of assets over liabilities in determining whether, and to what extent, the reconciliation reserve displays the features determining Tier 1 classification set out in Article 71).

Therefore, the EC proposed change poses a number of critical issue:

- Conflict with the objectives of the review:
  - The recognition of the full value embedded in long-term in-force business is necessary to provision of long-term guarantees.
  - Ring-fencing the recognition of profits at subsidiary level is not compatible with the functioning of the Capital Markets Union (CMU).
  - The proposed art.330 leaves the door open to divergent supervisory interpretations and gold-plating.
- Inconsistency with the Solvency II Best Estimate Liability (BEL) and reconciliation reserve:
  - Article330 was never conceived to apply to specific individual components of reconciliation reserve, but to standalone own fund items issued by entities in the group.
  - EPIFP are not a standalone own funds item but an integral part of the Best Estimate Liabilities (BEL). The cashflows comprising EPIFP are as robust as any other BEL component and are economic and meet Solvency II requirements.
  - The recognition of EPIFP at group level follows logically from the aggregation of entities' TP, adjusted for intragroup transactions.
- No economic rationale:
  - EPIFP represents future profits embedded in premiums which will pay in whole the liabilities as they arise in the entities. In BEL calculations, the profit in the premium in each year pays the liability outgo of that year per the SII regulation. In other words, this is a BEL calculation topic, with no relationship with the topic of group capital availability.
  - Denying recognition of EPIFP from subsidiaries while allowing it at the parent level—despite potentially identical cashflow profiles—would be uneconomic and an incentive to inefficient group restructure.
- Not a solvency issue:
  - Even hypothetical scenarios where the EPIFP would emerge only after the claims are paid are not a valid justification to denying availability at group level. These scenarios could give rise to liquidity issues, but not solvency issues.
  - Regarding the former, an entity complying with Solvency II will ensure that there are sufficient funds to pay the liabilities as they fall due and will need to structure its assets and liability cashflow profiles to achieve this.

Recommendation: The RAB urges the Commission to delete the reference to EPIFP in the group capital availability assessment in Article 330 of the Level 2, through the following amendment to the delegated act, in tracked changes:

(106) Article 330 is amended as follows: (a) paragraph 1 is replaced by the following: '1. When assessing whether certain own funds that are eligible to cover the Solvency Capital Requirement referred to in Article 69, points (a)(i) to (a)(v), Article 69, point (b), ~~Article 70(2~~),and Articles 72, 74, 76, 78, and 79 of a related insurance or reinsurance undertaking, a related third country insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company, cannot effectively be made available to cover the group Solvency Capital Requirement, the supervisory authorities shall consider all of the following elements:…

7. Volatility Adjustment (VA), Credit Spread Sensitivity Ratio (CSSR)

- Suggestion to include an opt-out in Section 4/Subsection 6 "Proportionality and Simplifications" (starting from §56). Proposed wording for a new paragraph (based on existing similar provisions in Level 2 in the mentioned section:
  - *"Insurance or reinsurance groups may apply the same CSSR (per currency) for entities of a subgroup or group, calculated based on the subgroup's or group's asset and liability portfolios."*
- This would guarantee consistency within an insurance/reinsurance group and also avoid unnecessary complexity.

Recommendation: Groups should be permitted the option to apply the same CSSR (per currency) for entities of a subgroup or group, calculated based on the subgroup's or group's asset and liability portfolios.

8. Reporting (Sustainability and RSR)

- **Sustainability & climate risk** (Articles 292, 294, 296, 297a) and alignment with other frameworks: there is a fundamental concern that the draft delegated act progresses without clear definitions or alignment with other reporting frameworks (e.g. Corporate Sustainability Reporting Directive, CSRD). Without this, the scope and impact of the changes cannot be properly assessed. The industry therefore proposes removing references to sustainability risks where detailed requirements are not yet available.
  - Additional Solvency and Financial Condition Report (SFCR) disclosures: Articles 292(3d), 294, 296 and 297a introduce sustainability risk disclosures within the SFCR. While the industry supports transparency on material risks, these are already reported in the ORSA and CSRD. Adding them again in the SFCR in a different format would create significant additional burden without clear added value for users.
  - Terminology inconsistency: The Delegated Acts use "climate-related risks" and "sustainability risks" seemingly interchangeably. This inconsistency creates uncertainty regarding the scope of analysis and disclosures and should be clarified.

Recommendation: The ORSA covers sustainability risks, if material, and measures to address these risks, and thereby should include the sustainability risk plan reporting. No other reports should duplicate these reporting requirements.

- **RSR, Article 327b (4):** The exception in paragraph 327b (4) should not only apply to the quantitative thresholds in point c), but also to the complexity criterion in point b). This would ensure that supervisory authorities retain sufficient discretion under the supervisory review process to assess the overall risk profile. The three-year frequency would be aligned with the European Commission's strategy to reduce reporting burdens

Recommendation: Exceptions for reporting should consider complexity criteria to assess the overall risk profile. The three-year frequency would be aligned with the European Commission's strategy to reduce reporting burdens.

Insurance Europe's Reinsurance Advisory Board (RAB) is a specialist representative body for the European reinsurance industry. It is represented at chairman and chief executive officer (CEO) level by the seven largest European reinsurance firms: Gen Re, Hannover Re, Lloyd's, Munich Re, PartnerRe, SCOR and Swiss Re, with Insurance Europe providing the secretariat.

Through its member bodies, the RAB represents more than 50% of total worldwide reinsurance premium income. The RAB promotes a stable, innovative and competitive market environment. It further promotes