CEA
Insurers of Europe

CEA proposed amendments, April 2008

Amendment 1:

Recital 14 a (new)

The supervision of reinsurance activity shall 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.

| Justification

With the introduction of Solvency II the purpose of the RID to provide a tailor-made regime for reinsurance thus disappears. It is crucial to reiterate the special nature of reinsurance in the Solvency II Directive. Reference should be made to the IAIS Standard on Reinsurance supervision.

With this new recital it is clarified that the proportionality principle requires consideration of the special nature of reinsurance business.

Amendment 2:

Recital 31 a (new)

The value of technical provisions shall be equal to the sum of a best estimate and a risk margin, which should be calculated separately.

However, where proven and reliable techniques are used to value the future cash flows associated with insurance or reinsurance obligations, and these techniques result in values that are consistent with the market price of financial instruments that reflect the nature and characteristics of these future cash flows, then there should be no requirement to perform separate calculations to split these valuations into best estimate and ~~the~~ risk margin components.

| Justification

The requirement of future cash flows to be "replicated using financial instruments for which a market value is directly observable [article 76.4] on the basis of the market value of those financial instruments" is in most cases likely to be impossible in practice. The language of the Framework directive could be interpreted too restrictively. The requirement should be that the valuation techniques used should achieve results that accurately replicate the market price of financial instruments that have characteristics sufficiently close to the corresponding insurance liabilities (e.g. taking into account the nature, terms and moneyness of any embedded options). The proposed recital is intended to clarify that.

Amendment 3:
Article 38

Supervision of outsourced activities

Text proposed by the Commission	Amendment by CEA
1. Member States shall ensure that insurance or reinsurance undertakings which outsource an activity, in accordance with Article 48, provide for the following:	1. Member States shall ensure that insurance or reinsurance undertakings which outsource an activity, in accordance with Article 48, provide for the following:
(a) the service provider must cooperate with the supervisory authorities of the insurance and reinsurance undertaking in connection with the outsourced activity;	(a) the service provider must cooperate with the supervisory authorities of the insurance and reinsurance undertaking in connection with the outsourced activity;
(b) the insurance and reinsurance undertakings, their auditors and the relevant supervisory authorities must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, where those premises are located within the Community, and the supervisory authorities must be able to exercise those rights of access.	(b) the insurance and reinsurance undertakings, their auditors and the relevant supervisory authorities must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, where those premises are located within the Community, and the supervisory authorities must be able to exercise those rights of access.
2. The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site-inspections at the premises of the service provider, after having first informed its own appropriate authorities. In the case of a non supervised entity the appropriate authority shall be the supervisory authority. The supervisory authorities of the Member State of the insurance or reinsurance undertaking may delegate such on-site inspections to the supervisory authorities of the Member State where the service provider is located.	2. The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site-inspections at the premises of the service provider, after having first informed its own appropriate authorities. In the case of a non supervised entity the appropriate authority shall be the supervisory authority. The supervisory authorities of the Member State of the insurance or reinsurance undertaking may delegate such on-site inspections to the supervisory authorities of the Member State where the service provider is located.
	3. <u>Outsourcing to service providers located in third countries shall be permitted under the conditions of paragraphs 1 and 2.</u>

| Justification

The provisions on outsourcing imply that it is not possible for EU firms to outsource important operational activities to third country service providers. Article 38 (2) requires that EU authorities are able to carry out on-site inspections at the premises of the service provider. This would not be possible in third countries unless there is a co-operation agreement in place. EU subsidiaries of third country insurance groups should be able to outsource activities to the parent company or to other related companies in third countries.

Amendment 4:
Article 49

Implementing measures

Text proposed by the Commission	Amendment by CEA
The Commission shall adopt implementing measures to further specify the following:	The Commission shall adopt implementing measures to further specify the following:
(1) the elements of the systems referred to in Articles 41, 43, 45 and 46, and in particular the areas to be covered by the asset – liability management and investment policy, as referred to in Article 43(2), of insurance and reinsurance undertakings;	(1) the elements of the systems referred to in Articles 41, 43, 45 and 46, and in particular the areas to be covered by the asset – liability management and investment policy, as referred to in Article 43(2), of insurance and reinsurance undertakings;
(2) the functions referred to in Articles 43, 45, 46 and 47;	(2) the functions referred to in Articles 43, 45, 46 and 47;
(3) the requirements set out in Article 42 and the functions subject thereto;	(3) the requirements set out in Article 42 and the functions subject thereto;
(4) the conditions under which outsourcing may be performed.	(4) the conditions under which outsourcing may be performed.
	(5) the scope and methods for the own risk and solvency assessment as set out in Article 44.
Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).	Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

| Justification

Level 2 implementing measures are needed in this field since it could comprise a major part of the changes that companies need to develop in order to get ready for Solvency II. A harmonised definition of the scope and methodology used for the assessments on a European level will create consistency and avoid the use of different supervisory practices. Implementing measures should, among other things, clarify that ORSA (Own Risk and Solvency Assessment) must not be used to undermine the principle that the SCR and the MCR, as calculated under Article. 101, are the only relevant solvency levels.

Amendment 5:
Article 50 (1)

Report on Solvency and financial condition: contents

Text proposed by the Commission	Amendment by CEA
1. Member States shall, taking into account the principles set out in paragraphs 3 and 4 of Article 35, require insurance and reinsurance undertakings to publicly disclose, on an annual basis, a report on their solvency and financial condition. That report shall contain the following information, either in full or by way of references to equivalent information disclosed publicly under other legal or regulatory requirements:	1. Member States shall, taking into account the principles set out in paragraphs 3 and 4 of Article 35, require insurance and reinsurance undertakings to publicly disclose, on an annual basis, a report on their solvency and financial condition. That report shall contain the following information, either in full or by way of references to equivalent information disclosed publicly under other legal or regulatory requirements:
(a) a description of the business and the performance of the undertaking;	(a) a description of the business and the performance of the undertaking;
(b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;	(b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;
(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;	(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;
(d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;	(d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;
(e) a description of the capital management, including at least the following:	(e) a description of the capital management, including at least the following:
(i) the structure and amount of own funds, and their quality;	(i) the structure and amount of own funds, and their quality;
(ii) the amounts of the Minimum Capital Requirement and of the Solvency Capital Requirement;	(ii) the amounts of the Minimum Capital Requirement and of the Solvency Capital Requirement;
(iii) information allowing a proper understanding of the main differences between the standard formula and any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;	~~(iii) information allowing a proper understanding of the main differences between the standard formula and any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;~~
(iv) the amount of any non compliance with the Minimum Capital Requirement or any significant non compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.	(iv) the amount of any non compliance with the Minimum Capital Requirement or any significant non compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

| Justification

The draft Directive requires a "Report on Solvency" which must contain i.a. a description of the main differences between the standard formula and the internal model used for the calculation of SCR (Article 50 para. 1, (e) (iii)). The design of an internal model is not necessarily aligned with the design of the standard formula as it intends to provide a more sophisticated measurement of the risks. A comparison should be kept at the highest possible level otherwise the standard formula may direct the design of internal models. Therefore, the information on internal models should focus on the main factors needed for a proper understanding of its characteristics and its ability to capture the risk profile of the company rather than on the comparison with the risk modules prescribed in the standard formula.

Amendment 6:
Article 53

Report on Solvency and Financial condition: updates and additional voluntary information

Text proposed by the Commission	Amendment by CEA
1. In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 50 and 52, insurance and reinsurance undertakings shall disclose appropriate information on its nature and effects.	1. In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 50 and 52, insurance and reinsurance undertakings shall disclose appropriate information on its nature and effects.
For the purposes of the first subparagraph, at least the following shall be regarded as major developments:	For the purposes of the first subparagraph, at least the following shall be regarded as major developments:
(a) where non compliance with the Minimum Capital Requirement is observed and the supervisory authorities either consider that the undertaking will not be able to submit a viable recovery plan or do not obtain such a plan within one month;	(a) where non compliance with the Minimum Capital Requirement is observed and the supervisory authorities either consider that the undertaking will not be able to submit a viable recovery plan or do not obtain such a plan within one month;
(b) where a significant non compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a recovery plan which they consider viable within two months.	(b) where a significant non compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a recovery plan which they consider viable within two months.
In the cases referred to in point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a recovery plan initially considered to be viable, a non compliance with the Minimum Capital Requirement has not been resolved two months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken.	In the cases referred to in point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a recovery plan initially considered to be viable, a non compliance with the Minimum Capital Requirement has not been resolved ~~two~~ <u>three</u> months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken.
In the case referred to in point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be viable, a significant non compliance with the Solvency Capital Requirement has not been resolved four months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken	In the case referred to in point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be viable, a significant non compliance with the Solvency Capital Requirement has not been resolved ~~four~~ <u>six</u> months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken

| Justification

Articles 136 and 137 respectively, require the undertaking to recover the MCR and SCR in case of non-compliance within 3 and 6 months (recovery plan submitted after 1 and 2 months respectively). The public disclosure requirements in this article, as they stand, are not fully aligned with these requirements.

CEA Insurers of Europe

Amendment 7:
Article 75 (2)

General provisions

Text proposed by the Commission	Amendment by CEA
1. Member States shall ensure that insurance and reinsurance undertakings establish technical provisions with respect to all of their insurance and reinsurance obligations towards policyholders and beneficiaries of insurance or reinsurance contracts.	1. Member States shall ensure that insurance and reinsurance undertakings establish technical provisions with respect to all of their insurance and reinsurance obligations towards policyholders and beneficiaries of insurance or reinsurance contracts.
2. The calculation of technical provisions shall be based on their current exit value.	**2.** <u>Technical provisions shall be calculated on a market consistent basis and in a reliable and objective manner</u> ~~The calculation of technical provisions shall be based on their current exit value.~~
3. The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on insurance and reinsurance technical risks (market consistency).	3. The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on insurance and reinsurance ~~technical~~ <u>underwriting</u> risks (market consistency).
4. Technical provisions shall be calculated in a prudent, reliable and objective manner.	4. ~~Technical provisions shall be calculated in a prudent, reliable and objective manner.~~

| Justification

The inclusion of the term "current exit value", which is not explicitly defined in the Solvency II Framework Directive, could result in a misleading principle and a consequent inappropriate application. In particular, when considering that the same term is used in the context of the development with regard to IFRS Insurance Contracts Phase 2, its inclusion could give the wrong perception that the Solvency II definition is aligned with the definition which will be elaborated in the IFRS contexts. This is not necessarily true as it is also not yet clear which definition will be used by the IASB to this purpose. Although it is recognised the importance to ensure consistency with the accounting debate, there may be good reasons for the solvency and accounting to have valid but reconcilable differences. Harmonisation with the accounting rules should only be done if these are consistent with the framework underlying the approach for Solvency II.

The principles already set out by this Framework Directive and the development of implementing measures should represent the stand alone reference for the Solvency II calculation of technical provisions.

Amendment 8:
Article 97

Implementing measures

Text proposed by the Commission	Amendment by CEA
1. The Commission shall adopt implementing measures laying down the following:	1. The Commission shall adopt implementing measures laying down the following:
(a) where it is necessary to ensure the overall quality of own funds and cross-sectoral consistency, the division of tiers into sub-tiers;	~~(a) where it is necessary to ensure the overall quality of own funds and cross-sectoral consistency, the division of tiers into sub-tiers;~~
(b) the criteria used to classify own fund items into the sub-tiers referred to in point (a) based on the characteristics set out in Article 92	~~(b) the criteria used to classify own fund items into the sub-tiers referred to in point (a) based on the characteristics set out in Article 92~~
(c) a list of own fund items deemed to meet the criteria, set out in Article 93 and in point (b) of this paragraph, which contains for each own fund item a precise description of the features which determined its classification;	(c) a list of own fund items deemed to meet the criteria, set out in Article 93 and in point (b) of this paragraph, which contains for each own fund item a precise description of the features which determined its classification;
(d) the methods to be used by supervisory authorities, when approving the assessment and classification of own fund items which are not covered by the list referred to in point (c).	(d) the methods to be used by supervisory authorities, when approving the assessment and classification of own fund items which are not covered by the list referred to in point (c).
Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313 (3).	Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313 (3).
2. The Commission shall regularly review and, where appropriate, update the list referred to in point (c) of paragraph 1 in the light of market developments.	2. The Commission shall regularly review and, where appropriate, update the list referred to in point (c) of paragraph 1 in the light of market developments.

| Justification

As explained in more detail in the proposed amendment to Article 98, any additional limits to own funds that can be used to cover the MCR and the SCR may be dealt with through Level 2 implementing measures. There is no need for sub tiers.

Amendment 9:
Article 98

Eligibility and limits applicable to Tier 1, Tier, 2, Tier3

Text proposed by the Commission	Amendment by CEA
1. As far as the Solvency Capital Requirement is concerned, the amounts of Tier 2 and Tier 3 items shall be subject to the following limits:	~~1. As far as the Solvency Capital Requirement is concerned, the amounts of Tier 2 and Tier 3 items shall be subject to the following limits:~~
(a) in order to ensure that the proportion of Tier 1 items in the eligible own funds is higher than one third of the total eligible own funds, the eligible amount of Tier 2 together with the eligible amount of Tier 3 shall be limited to twice the total amount of Tier 1 items;	~~(a) in order to ensure that the proportion of Tier 1 items in the eligible own funds is higher than one third of the total eligible own funds, the eligible amount of Tier 2 together with the eligible amount of Tier 3 shall be limited to twice the total amount of Tier 1 items;~~
(b) in order to ensure that the proportion of Tier 3 items in the eligible own funds is less than one third of the total eligible own funds, the eligible amount of Tier 3 shall be limited to half the total amount of Tier 1 and eligible amount of Tier 2 items.	~~(b) in order to ensure that the proportion of Tier 3 items in the eligible own funds is less than one third of the total eligible own funds, the eligible amount of Tier 3 shall be limited to half the total amount of Tier 1 and eligible amount of Tier 2 items.~~
2. As far as the Minimum Capital Requirement is concerned, in order to ensure that the proportion of Tier 1 items in the eligible basic own funds shall be higher than one half of the total eligible basic own funds, the amount of basic own fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be limited to the total amount of Tier 1 items.	~~2. As far as the Minimum Capital Requirement is concerned, in order to ensure that the proportion of Tier 1 items in the eligible basic own funds shall be higher than one half of the total eligible basic own funds, the amount of basic own fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be limited to the total amount of Tier 1 items.~~
3. Where sub-tiers have been introduced, in accordance with point (a) of Article 97 (1), specific limits shall apply to the amount of own fund items classified in those sub-tiers.	~~3. Where sub-tiers have been introduced, in accordance with point (a) of Article 96 (1), specific limits shall apply to the amount of own fund items classified in those sub-tiers.~~
4. The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 100 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.	1. The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 100 shall be equal to the sum of the amount of Tier 1 the eligible amount of Tier 2 and the eligible amount of Tier 3. The proportion of Tier 1 items in the eligible own funds shall be higher than one third of the Solvency Capital Requirement.
5. The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Article 126 shall be equal to sum of the amount of Tier 1 and the eligible amount of basic own fund items classified in Tier 2.	2. The eligible amount of ~~basic~~ own funds to cover the Minimum Capital Requirement set out in Article 126 shall be equal to sum of the amount of Tier 1 and the eligible amount of ~~basic~~ own fund items classified in Tier 2.

| Justification

Some form of tiering and restrictions is desirable to prevent companies being inappropriately capitalised with capital of relatively low quality. However, the eligibility limits of Tier 2 and 3 capital, as proposed in the Article 98, are excessive, arbitrary and not based on a economic rationale. The amendment introduces the only limits which are deemed as necessary with regard respectively the coverage of SCR and MCR (i.e. T1> 1/3 SCR). Any additional limit that might be consider as appropriate with regard to Tier 2 and 3 may be better dealt with through Level 2 implementing measures (see therefore also the amendment to Article 99).

Amendment 10:
Article 99

Implementing measures

Text proposed by the Commission	Amendment by CEA
The Commission shall adopt implementing measures laying down the specific limits applicable to Tiers and sub-tiers, where sub-tiers have been introduced. Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).	The Commission ~~shall~~ may adopt implementing measures restricting tier 2 and tier 3 capital to the amounts that may be demonstrated to be necessary to provide an appropriate level of protection for policyholders ~~laying down the specific limits applicable to Tiers and sub-tiers, where sub-tiers have been introduced.~~ Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

| Justification

As explained in more detail in the proposed amendment to Article 98, any additional limits to own funds that can be used to cover the MCR and the SCR may be dealt with through Level 2 implementing measures. There is no need for sub tiers.

Amendment 11:
Article 111 (2)

Specific provision for the approval of partial internal models

Text proposed by the Commission	Amendment by CEA
1. When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of an insurance or reinsurance undertaking with respect to a specific risk module, or parts of both, supervisory authorities may require the insurance and reinsurance undertakings concerned to submit a realistic transitional plan to extend the scope of the model. The transitional plan shall set out the manner in which insurance and reinsurance undertakings plan to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.	*Delete*

| Justification

This article poses conditions for the use of partial internal models. For many companies a partial model, used in combination with the Standard Approach, may be more cost effective solution than a full internal model as it concentrates resources on the most significant risks. This option is particularly important for the proportionate treatment of small and medium-sized insurance undertakings.

In such circumstances supervisors should not be able to force undertakings to develop full internal models that might add little to risk management, but involve significant cost. Supervisor's power to require an undertaking to submit a transitional plan to extend a partial model to cover the predominant part of the business is excessive and could deter discourage companies from using this option to the detriment of a better assessment of their specific risk profile. The criteria for the permission to use a partial model should rather refer to whether such a partial model better captures and models the companies' specific risks. Supervisors already have the power (Article 117) to enforce an internal model when they are of the opinion that the standard approach (whether or not used in combination with a partial model) captures the risk profile of the insurance undertaking inappropriately.

Amendment 12:
Article 117

Significant deviations from the assumptions underlying the Solvency Capital Requirement

Text proposed by the Commission	Amendment by CEA
Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance and reinsurance undertakings concerned deviates significantly from the assumptions underlying the Solvency Capital Requirement, the supervisory authorities may, by a decision stating the reasons, require the undertakings concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules of thereof.	Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance and reinsurance undertakings concerned deviates significantly from the assumptions underlying the Solvency Capital Requirement, the supervisory authorities may <u>in exceptional circumstances</u>, by a decision stating the reasons, require the undertakings concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules of thereof.

| Justification

The powers for supervisor to require companies to develop an internal model, where their risk profile "deviates significantly from the assumptions underlying the standard approach", should only apply in exceptional cases, as recognised in Article 37.

Amendment 13:
Article 127

Calculation of Minimum Capital Requirement

Text proposed by the Commission	Amendment by CEA
1. The Minimum Capital Requirement shall be calculated in accordance with the following principles: (a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited; (b) the Minimum Capital Requirement shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations; (c) the level of the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level in the range of 80% to 90% over a one-year period; (d) it shall have an absolute floor of 1 000 000 EUR for non-life insurance and reinsurance undertakings and 2 000 000 EUR for life insurance undertakings. 2. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.	1. The Minimum Capital Requirement shall be calculated in accordance with the following principles: (a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited; (b) the Minimum Capital Requirement shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations; (c) the level of the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level in the range of 80% to 90% over a one-year period; (d) it shall have an absolute floor of 1 000 000 EUR for non-life insurance and reinsurance undertakings and 2 000 000 EUR for life insurance undertakings. <u>(e) the calibration of the Minimum Capital Requirement shall be risk sensitive and shall ensure an appropriate interplay with the Solvency Capital Requirement in order to allow for an escalating ladder of supervisory intervention.</u> 2. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.

| Justification

A calculation of the MCR which is not appropriately risk sensitive would hinder the proper functioning of the Solvency II regime. In particular, this would not ensure the desired interplay between the MCR and the SCR to allow for an escalating ladder of supervisory intervention. Also, article 136 (non-compliance with the MCR) explicitly acknowledges that an insurance undertaking which is exposed to deteriorating financial conditions, may take measures to reduce its risk profile in order to restore compliance with the MCR. It is therefore important that measures that reduce the risk profile of the undertaking are explicitly recognised by the methodology used to determine the level of the MCR and as result ensure that sound risk management and supervisory compliance do not give different incentives.

CEA strongly believes that the MCR should be calculated as a percentage of the appropriate SCR figure annually calculated by the company and reviewed by the supervisor, whether derived from the use of the standard formula or internal model ("compact approach"). In conjunction with each calculation of the SCR, this percentage would then be re-expressed as accompany specific percentage of technical provisions (or premiums as appropriate) in order to face the issue of legal certainty and auditability as well as to avoid ad hoc interim-calculation of the SCR,

Instead of including expressively the above methodology in the article, a consistent "principle based" amendment is proposed, in line with the general approach of the directive.

The current wording of Article 127 does implicitly recognise that MCR should be risk sensitive, by requiring that the MCR shall be calibrated to a Value-at-Risk confidence level in the range of 80% to 90% over a one-year period (Article 127 (c)). Nevertheless, considering the role and the implications of the MCR, the requirement that it should be risk sensitive and consistent with the SCR should be made more explicit as it is done by the proposed amendment.

Amendment 14:
Article 132

Localisation of assets and prohibition of pledging of assets

Text proposed by the Commission	Amendment by CEA
2. Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsuring undertaking is an insurance or reinsurance undertaking authorised in accordance with this Directive.	2. Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets ~~to cover unearned premiums and outstanding claims provisions~~ if the reinsuring undertaking is an insurance or reinsurance undertaking authorised in accordance with this Directive.

| Justification

The Solvency II Draft Directive simply recasts the credit for reinsurance rules that have been introduced by the RID: Member States may not apply a gross reserving system which requires the pledging of assets that cover "unearned premiums" and "outstanding claims provisions" (Article 131 and 170). The prohibition of pledging of assets is still limited to P&C reserves.

Most continental European countries apply a gross reserving system that does not recognise life reinsurance recoverable as admissible for covering mathematical provisions. This system indirectly imposes collateral for life reinsurance since ceding companies are forced to request reinsurers to pledge assets.

The scope of the prohibition of pledging of assets should be extended to all types of technical provisions, including mathematical provisions in life insurance. This is also in line with the language of Recital 46. Main arguments:

- It is not compatible with a risk-based approach to apply a gross reserving system that requires the pledging of assets. The reinsurance counterparty credit risk is already duly taken into account as specific capital charge for solvency calculation.

- From a policyholder perspective, it might be justified to cover the savings part of life business with "hard assets"; but it is not justified to apply this system to the mortality risk part (which is reinsured).

- Current attempts to reform the US collateral system will be based on reciprocity. The recent New York draft amendment to Regulation 20 allows collateral reduction only if the non-US reinsurer's home country allows market access to US reinsurers that is at least as favorable than provided under NY law. Under current EU rules it would be difficult to provide evidence that US reinsurers would not have to post collateral for Life and Health insurance business.

The limitation of the prohibition of pledging of assets to "unearned premiums and outstanding claims provisions" in Article 131 and 170 could be simply deleted.

Amendment 15:
Article 136

Non-Compliance with the Solvency Capital Requirement

Text proposed by the Commission	Amendment by CEA
1. Insurance and reinsurance undertakings shall inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.	1. Insurance and reinsurance undertakings shall inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.
2. Within two months from the observation of the non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.	2. Within two months from the observation of ~~the~~ a significant non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.
3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of the non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement. The supervisory authority may, if appropriate, extend that period by three months.	3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of ~~the~~ a significant non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement. The supervisory authority may, if appropriate, extend that period by three months.
4. In exceptional circumstances, if the supervisory authority is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.	4. In exceptional circumstances, if the supervisory authority is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

| Justification

The current wording of Article 136 makes any breach of the SCR the cause of automatic and inflexible supervisory interventions. This is not in line with the purpose of the SCR as a target capital level and would, as a result, require the company to hold additional capital to prevent any non-significant breach of the SCR.

In addition, the article gives supervisors the power to restrict or prohibit the disposal of assets if, in exceptional circumstances, supervisors believe that an undertaking's non- compliance with the SCR requirement could deteriorate further. In the current Solvency II Framework Directive, these additional powers are not subject to further principles or any implementing measures. For this reason, an amendment is proposed as well to Article 141 to require that implementing measures are been developed to ensure that the scope and measures used by the supervisory authorities are proportionate to the risk posed to the protection of the undertakings' policyholders and beneficiaries.

CEA Insurers of Europe

Amendment 16:
Article 139

Supervisory powers in deteriorating financial conditions

Text proposed by the Commission	Amendment by CEA
Notwithstanding Articles 136 and 137 if the solvency position of the undertaking continues to deteriorate, the supervisory authorities shall have the power to take all measures necessary to safeguard the interests of policyholders in the case of insurance contracts, or the obligations arising out of reinsurance contracts. Those measures shall reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.	Notwithstanding Articles 136 and 137 if the solvency position of the undertaking continues to deteriorate, the supervisory authorities shall have the power to take ~~all~~ measures necessary to safeguard the interests of policyholders in the case of insurance contracts, or the obligations arising out of reinsurance contracts. Those measures shall reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned <u>and should be proportionate to the risk posed to the protection of policyholders and beneficiaries.</u>

| Justification

This article gives supervisors the power to "take all measures necessary to safeguard the interests of policyholders". This unlimited power appears to be far too open and wide ranging. The supervisory powers should be principle based, proportionate and escalating commensurate with the level of the capital breach. They should also take into account the potential for the company's capital position to worsen in the future and any mitigating actions that the company has taken or intends to take in the near future.

In addition, implementing measures are considered necessary to define criteria for the implementation of this supervisory power (see amendment to article 141).

CEA
Insurers of Europe

Amendment17:
Article 141

Implementing measures

Text proposed by the Commission	Amendment by CEA
The Commission may adopt implementing measures laying down further specifications with respect to the recovery plan referred to in Article 136(2) and the finance scheme referred to in Article 137(2).	<u>The Commission shall adopt implementing measures to clarify the conditions of the interventions referred to in Article 136 (3), 136 (4) and to clarify the application of the principles referred to in Article 139.</u>
Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).	The Commission may adopt implementing measures laying down further specifications with respect to the recovery plan referred to in Article 136(2) and the finance scheme referred to in Article 137(2).
	Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

| Justification

Level 2 implementing measures are needed to clarify the conditions of the interventions referred to in Article 136 on Non-Compliance with the Solvency Capital Requirement and the application of the principles in Article 139.

Amendment 18:
Article 171

Prohibition of pledging of assets

Text proposed by the Commission	Amendment by CEA
Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsuring undertaking is an insurance or reinsurance undertaking having its head office in a third country whose solvency regime is deemed to be equivalent to that laid down in this Directive in accordance with	Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets ~~to cover unearned premiums and outstanding claims provisions~~ if the reinsuring undertaking is an insurance or reinsurance undertaking having its head office in a third country whose solvency regime is deemed to be equivalent to that laid down in this Directive in accordance with

| Justification

See Amendment referring to Article 132.

Amendment 19:
Article 237 (2)

Subsidiaries of an insurance or reinsurance undertaking: coverage of the Solvency Capital Requirement

Text proposed by the Commission	Amendment by CEA
2. The group support shall take the form of a declaration to the group supervisor, expressed in a legally binding document and constituting a commitment to transfer own funds eligible under Article 98(5).	2. The group support shall take the form of a declaration <u>from the parent undertaking</u> to <u>the subsidiary</u> ~~the group supervisor~~, expressed in a legally binding document, <u>accepted by the group supervisor in accordance with paragraph 3,</u> and constituting a commitment to transfer own funds eligible under Article 98(5).

| Justification

The current wording of Article 237 (2) could lead to the misinterpretation that the parties of the contract would be parent undertaking and the group supervisor. Instead, a declaration of group support is a commitment by the parent undertaking to transfer own funds (eligible under Article 98(5)) to the subsidiary when required.

The suggested amendment clarifies that a declaration of group support shall be provided by the parent undertaking to the subsidiary and is subject to the acceptance of the group supervisor, who shall verify that three conditions that are lined out in 237 (c) are satisfied before it takes a decision whether or not to accept the declaration.

Amendment 20:
Article 238 (3)

Subsidiaries of an insurance or reinsurance undertaking: monitoring of the SCR

Text proposed by the Commission	Amendment by CEA
3. Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group support declared in accordance with Article 237, and the own funds eligible under Article 98(5) are not sufficient to cover the minimum capital requirement, the supervisory authority may call on the parent undertaking to transfer own funds eligible under Article 98(5) to the extent necessary to ensure that the minimum capital requirement is again covered, and to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.	3. Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group support declared in accordance with Article 237, and the own funds eligible under Article 98(5) are not sufficient to cover the minimum capital requirement, the supervisory authority may call on the parent undertaking to transfer own funds eligible under Article 98(5) to the extent necessary to ensure that the minimum capital requirement is again covered, ~~and~~ <u>up to the limit of the group support resulting from the most recent declaration accepted. In addition, the supervisory authority may call on the parent undertaking</u> to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.

| Justification

The obligation of the parent undertaking to the subsidiary that has received a declaration of group support could be misinterpreted, due to the differences in wording of Art 238 (3) in comparison to e.g. Article 238 (4) and Article 239. In line with Article 238 (4) and Article 239, a declaration of group support is a limited contractual obligation. Therefore, the proposed amendment clarifies that under the group support regime, the obligation of the parent undertaking to transfer own funds is neither unlimited in Article 238 (3). To be precise, the amendment makes it clear that in case the MCR of a subsidiary that has received group support is no longer complied with, the parent undertaking is obliged to inject own funds (a) necessary to recover the MCR or (b) up to the amount committed to in the most recent accepted declaration of group support. The second limit only applies in those cases that the level of group support provided by the parent to the subsidiary is smaller than the amount of own funds that are needed to be transferred recover the MCR. Obliging parent undertakings to transfer more than declared to recover the MCR of the respective subsidiary, could put the financial stability of the whole group at risk.

The second change ("In addition ... undertaking") clarifies that the request from the supervisory authority to the parent undertaking to provide a new declaration, is an additional request which is independent from the parents' obligation to transfer the required own funds.

CEA
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Amendment 21:
Article 252 (2)

Rights and duties of the group supervisor – Coordination arrangements

Text proposed by the Commission	Amendment by CEA
2. In order to facilitate group supervision, the group supervisor and the other supervisory authorities concerned shall have coordination arrangements in place. Those coordination arrangements may entrust additional tasks to the group supervisor and may specify, without prejudice to any measure adopted pursuant to this Directive, the procedures for the decision-making process among the supervisory authorities concerned as referred to in Articles 211(3), 212(2), 213(2), 214, 215, 217, 218(2), 219(2), 225(2), 236, 248, 249, 251 (3) and (4), 254, 263 and 264 and for cooperation with other supervisory authorities.	2. In order to facilitate group supervision, the group supervisor and the other supervisory authorities concerned shall have coordination arrangements in place <u>and shall specify, without prejudice to any measure adopted pursuant to this Directive, the procedures for the decision-making process among the supervisory authorities concerned as referred to in Article 236, and for cooperation with other supervisory authorities</u>. Those coordination arrangements may entrust additional tasks to the group supervisor and may specify, without prejudice to any measure adopted pursuant to this Directive, the procedures for the decision-making process among the supervisory authorities concerned as referred to in Articles 211(3), 212(2), 213(2), 214, 215, 217, 218(2), 219(2), 225(2), ~~236~~, 248, 249, 251 (3) and (4), 254, 263 and 264 and for cooperation with other supervisory authorities.

| Justification

According to article 236, the solo supervisor may no longer directly impose a capital add-on to the solo SCR, but can propose it to the group supervisor. To ensure that such proposal is treated in the most adequate and efficient manner, the proposed amendment requires that the procedures for decision-making have to be in put in place (shall) and are therefore no longer optional (may).

The proposed amendment to Article 252 clarifies that the implementing measures shall put in place the procedures for decision-making before the Solvency II regime is put in place. This is therefore no longer optional (may).