

Flash note: Review of Solvency II

Fourth political trilogue (22nd November 2023)

The fourth political trilogue on the Solvency II Review took place in the European Parliament's premises in Brussels on 22 November 2023 (15:00-18:00). It was chaired by the ECON Committee Chair, Ms Irene Tinagli. The rapporteur, Mr Markus Ferber (EPP), as well as two shadow rapporteurs, Mr Eero Heinäluoma (S&D) and Ms Stéphanie Yon-Courtin (Renew), were also present. The Council Presidency was represented by Mr Sergio Álvarez Camiña, Director General for Insurance and Pension Funds, as well as Mr Javier Castillo, Deputy-Director for Regulation and International relations at the DGSFP. The Commission was represented by DG FISMA Director for Banking, Insurance and Financial Crime, Mr Martin Merlin, with his team. The agenda of the trilogue is attached to this Flash Note (Annex 1). The discussion was informed by five Commission Services' Non-Papers on the five first topics on the agenda (in the order below). The negotiators also provisionally endorsed a list of lines from the four-column table reflecting initial work at technical level (also attached as Annex 2).

Long-term Guarantees/Long-term Equity (LTG/LTE):

➤ Risk Margin:

The Commission summarised the related conclusions in its Non-Paper, whereby it supports lowering the Cost of Capital (CoC) to 5%, cautioning against reducing it any further, and recommending further flexibility by setting and possibly adapting the figure through Level 2 measures, subject to appropriate framing of the Commission's empowerment in Level 1.

The rapporteur noted that the Commission's views were closer to the Council's mandate here, whereas the Parliament had two objectives: retain more direct control of the risk margin rules by the legislator, by introducing more elements in Level 1, and achieve a larger capital relief than in the Commission Proposal. He noted that all four options suggested by the Commission kept CoC in Level 2, which was not acceptable to the EP. In summary, the EP's position remained a 4.5% CoC set in Level 1.

The Presidency showed openness to following the EP's approach, subject to a satisfactory deal overall. However, noting also the impact of the measure on the financial position of EU insurers, the Presidency stressed that such an approach should be balanced by appropriately swift adaptability, by including also a Commission empowerment in respect of the Lambda factor (i.e. the time-dependent factor).

The Commission suggested supplementing the above approach with a Commission empowerment also on CoC, also in light of a possible future significant variations in interest rate levels. The Presidency found it worth exploring further, in order to achieve as robust and prudent a regime as possible. The rapporteur remained unconvinced by the Commission's arguments.

The Chair noted the co-legislators' position had started converging, but further substantive work was still needed.

➤ **Extrapolation:**

The Commission highlighted its suggested way forward on the two key parameters – the minimum 'weight to the ultimate forward rate' (UFR) and the first smoothing point (FSP)--, as well as on possible transitional arrangements.

The rapporteur stressed that the EP's approach was to anchor the extrapolation of the risk-free rate in Level 1: whilst the EP's minimum value for the UFR was higher than COM's and Council's 75%, he noted that on the FSP institutions are very close.

Both the Presidency and the Commission reiterated their preference for a 75% UFR as being more prudent. The rapporteur concluded that there was no agreement yet.

➤ **Volatility adjustment:**

The Commission stressed that it could not recommend introducing a link to the fundamental spread for the risk correction. It suggested instead starting with a 100% cap, accompanied by a Level 2 empowerment for future adaptations.

The rapporteur defended a different approach, starting by the opposite stance, namely, linking the risk correction to the fundamental spread, but showed openness to exploring a middle-ground approach, though the resulting figure should be lower than EIOPA's suggestion. On the quality overshooting factor, he was not convinced by possible moral-hazard arguments against EP's 125% ratio. However, he was open to exploring the Commission's third option – a time-limited 105% ratio.

The Presidency stressed the Council's preference for setting the precise risk correction elements in Level 2, subject to some guiding principles in Level 1. On the quality overshooting factor, the Presidency expressed a preference for 100% cap.

The Chair suggested that the Council and EP could further work on a common solution. The rapporteur showed openness to exploring the principle-based approach for Level 1 as suggested by the Presidency, and invited the Commission to propose a first draft accordingly.

➤ **LTE:**

The Commission summarised its proposed way forward, combining a preferential LTE regime, accompanied by a Commission empowerment, a framework for cases of non-compliance and clarifications on the applicable rules at group level.

The rapporteur was not convinced by the Commission's proposed way forward.

The Presidency was not strictly opposed to a Level 1 framework, but stressed that a Level 2 approach would achieve better results, and suggested further work at technical level to better frame its possible scope.

The rapporteur considered a mandate to the technical level as premature, but showed an interest for joint elaboration of a middle-ground solution, with the Commission services' support.

➤ **Interest rate risk:**

The rapporteur stressed the EP's preference for a Level 1 approach. He also noted that a "term-dependent floor" would be the most risk sensitive option.

The Presidency underlined that the Council's preference went to a Level 2 approach, with optional phasing-in. The floor could be discussed at technical level.

The Commission recalled its assessment that a specific Level 1 framing for this sub-module would be inconsistent with the approach taken for others. In respect of the term-dependent floor, which would imply significant work from EIOPA, it would be preferable to, first, mandate its consideration by the Commission.

The Presidency supported the Commission's suggestions, and it was agreed to move the topic to technical level.

➤ **Crypto assets:**

The rapporteur recalled the intention was to draw inspiration from the parallel amendments to the CRR-CRD rules.

Whilst the Commission advocated a broad empowerment, embracing both the interest rate, market risk and intangible asset risk sub-modules, the Presidency suggested prioritising the market risk module, but also showed openness to working on a wider focus. It was indeed agreed to mandate the technical level to work on a broad approach.

Summing up the results of this trilogue on the LTG/LTE approach, the Chair concluded the following: solutions on the interest-rate sub-module and on LTE would first be explored at technical level, without prejudice to possible informal political discussion in preparation for the trilogue; rules on crypto assets would also be prepared at technical level; whereas the volatility adjustment and the risk margin incl. the CoC would directly be discussed at the next trilogue, in view of a possible package agreement.

Sustainability and Governance:

The Commission presented the main elements of its Non-Paper and of the proposed way forward, highlighting the need for consistency of terminology and avoiding overlaps across legislation on ESG risk management.

On transition plans, the Commission was open to exploring a number of EP's ideas, incl. risk-based plans, subject to some clarifications and a Level 2 framing of the requirements, as well as amendments to the Accounting Directive and to the current fit-and-proper regime.

The rapporteur's objective was to take the Commission's recommended approach as a starting point, but with larger ambitions, so as to bring the framework on-par with the banking package ESG rule under finalisation. He stressed that transition plans were a key concern for the EP and should be covered in Level 1. The EP's approach was to stick to limited exemptions and that inserting additional disclosure requirements was warranted.

The Presidency pointed out that the Council's main concern is to avoid duplications and overlaps with the horizontal framework rules. On governance, the Commission had presented a sound way forward, incl. on a more specific role for supervisors. On transition plans, the Presidency could accept Option 2 from the Commission Non-Paper under EIOPA guidelines. On Proportionality, it was ready to follow the EP's approach and, on terminology, to follow the Commission's suggestions. Fit-and-proper should be included in the relevant provisions. Overall, the Presidency was prepared to show flexibility on sustainability, but this must be understood within the framework of a holistic and satisfactory agreement.

➤ **Definitions and sustainability risks in governance, risk management and supervision**

It was accordingly agreed to explore a package solution based on the Commission Non-paper.

➤ **Investment rules:**

The rapporteur recalled the EP's approach to bring relevant rules into Level 1. The Presidency supported that approach.

The Commission could broadly support this intention, but noted it was not possible to move selectively only some rules.

It was accordingly agreed to further work on a solution.

➤ **Transition plans and transition planning:**

The rapporteur stressed that the EP's majority view was to follow Option 2 in the Commission Non-Paper, namely to introduce in Solvency II the obligation to develop a prudential plan.

The presidency could accept that approach, subject to ensuring good coordination between the two kinds of transition plans.

It was agreed to proceed on the basis of Commission's Option 2. Commission was mandated to prepare draft guidelines for consideration at political level.

➤ **Additional disclosure requirements:**

The rapporteur recalled the EP's general thrust to increase disclosure in this area.

The Presidency argued that mandating additional disclosure of sustainability information was fraught with inconvenients, and that a better approach was to limit it to a solvency report.

The Commission also noted that there would be little benefit in adding sectoral rules to the existing horizontal framework, and that there would then be a need for appropriate safeguards to ensure consistency, in case of additional requirements in Solvency II. The Commission also cautioned against allowing non-LRPUs / SNCUs to apply for a supervisory waiver for climate

risk analysis, and that the introduction of supervisory discretion for all transition plans would lead to an unlevel playing field.

It was agreed to further work on a solution.

➤ **Amendments to the accounting Directive:**

It was agreed to further work on a solution.

➤ **Proportionality:**

The Commission presented the main points in its non-paper, noting that the co-legislators already agreed on several criteria, incl. the treatment of composites, and highlighting in particular its suggested way forward on captives, on the values of criteria for cross-border business and on the market risk criterion.

The rapporteur commended the Commission Non-paper and found that the main outstanding issues on criteria are the thresholds, which should be considered MS by MS in his view.

The Presidency could broadly follow the Commission's suggestions. On thresholds, its departure point was 5%, but it showed openness to a middle-way compromise. Regarding the new investment (market risk) criterion, the Presidency also found the 20% level sensible.

Concerning the absolute criterion for cross-border activities, the Presidency and the rapporteur maintained their respective preferences, i.e. 15 mn€ and 30 mn€ respectively. The Commission noted that a final compromise could accordingly lie, as regards the market risk criterion, within the 5 – 15% range, and, for the absolute criterion, within the 15 -30 mn€ range.

On the reporting frequency, the Commission advised against a 4 year frequency and the rapporteur accordingly maintained the EP's position on 5 years.

The Presidency announced it would check the way forward with MS.

Cross-border Activities:

On the back of its Non-Paper, the Commission summarised the state of play as follows. First, regarding the approach on significant cross-border activities, there was a need to agree on the new definition, combining both absolute and relative thresholds, and accompanied by a well-framed supervisory discretion to exclude some undertakings as non-relevant. Such framing could be based on guidelines or an RTS. With a view to framing an enhanced cooperation and information exchange framework applicable for significant cross-border activities, the Commission suggested taking the EP mandate for the trigger conditions and the Council mandate regarding the home MS supervisor's role. Regarding collaboration platforms, the Commission recommended keeping the existing rules for their establishment. Whilst EIOPA should be allowed to launch joint inspections on its own initiative, the home MS supervisor would remain in the lead, and would also be the first addressee of information requests by host MS supervisors. Only in the absence of reply by the home supervisor within the set deadline could host supervisors address their request directly to an insurance undertaking.

The rapporteur commended the Commission's suggestions as a sound basis for compromise. The EP concentrated its political focus on the aggregated figure for identifying significant cross-border activities, where the EP preferred the upper-bound of the commission's proposed range.

The Presidency further summarised the Council's negotiating stance as follows. First, the Council's position remained hinged on an absolute threshold at 15 mn€, the deletion of the relative threshold, and could accept supervisory discretion being framed by an RTS. Second, enhanced supervisory cooperation and information exchange between NSAs should be activated only upon request from host supervisors themselves. Third, concerning provisions on collaboration platforms, the Council cannot accept that EIOPA might also call in a supervisor to carry out onsite inspection. Finally, regarding the timeframe and language of information requests, the Presidency could agree with the Commission's proposed drafting, subject to lengthening the foreseen deadline.

Whilst the rapporteur appreciated the Council's openness on a possible RTS, he stressed that on the relative threshold there was no emerging compromise and still expected Council to show more flexibility on collaboration platforms. The Presidency replied that an automatic exchange of information beyond what is strictly necessary would be too burdensome.

Whilst the Commission expressed disappointment at the lack of compromise mood on the basis of its suggestions, especially regarding a relative threshold, the rapporteur urged more opening on Council's side also on supervisory cooperation.

The Chair noted in conclusion that framing a possible end-game compromise on this topic was premature.

Reporting and Auditing:

On the back of its Non-Paper, the Commission supported the following approach: allowing it to frame an exceptional extension of reporting deadlines via the adoption of an implementing act under the urgency procedure.

The rapporteur stressed that the EP could accept the Commission's suggestions, subject to further elaboration at technical level.

The Presidency stressed that legal doubts remained, on the Council's side, regarding the soundness of an implementing act solution.

The Council Legal Service stressed that the solution could either be a delegated act, where a decision would need to be made at EU level, or – sticking to the Council mandate – a decision by the concerned NSA(s) where the decision would be confined to specific jurisdiction(s). In any case, an implementing act was not the right tool at EU level. The Commission commented that its own Legal Service's advice was that an approach based on an implementing act was legally sound, but was also happy to revert to a delegated act approach.

The rapporteur stressed the EP would be happy with either solution. The Presidency announced it would further seek MS views on their preferred approach.

➤ **Internal Model users:**

The Commission suggested, as a way forward on the concept of estimate, to use existing recital 44 for a clarification that would thus avoid imposing an excessive burden on undertakings.

Both the rapporteur and the Presidency agreed.

Group Supervision:

On the back of its past non-papers, the Commission recalled its suggestions regarding a possible FICOD review clause – stressing it would not be appropriate to mandate through Solvency II a review of other pieces of legislation – and its recommended approach to group supervision, with a view to closing legal loopholes – thus allowing supervisors to see through complex, opaque group structures.

The rapporteur stressed that the EP's aim remained to include a broad review clause on FICOD – assessing the state of play, and interplay between that Directive, Solvency II and the CRR/CRD rules. He took note of the Commission's concerns regarding possible inconsistencies and side effects from the EP mandate on this topic, and offered openness to compromise on this topic in exchange for a review clause along the above lines.

The Presidency could accept the Commission's proposed way forward on group supervision. On FICOD, the Presidency could also agree with the Commission's suggestions, but stressed there was still a need for further work on several points incl. on this topic.

The rapporteur took note there was no emerging compromise and reiterated the EP's aim to cover the interplay FICOD – Solvency II – CRD/CRR.

The Commission took note of Council's agreement on the delineated approach to group supervision. On the review clause, the Commission had no mandate to go any further for now, but would further check possible flexibility internally.

The Presidency recognised the importance of the FICOD review clause for the EP and, whilst agreeing with the Commission's proposed way forward, announced it could show some flexibility in the framework of a holistic package.

The Chair concluded that informal discussion could continue in the run-up to the next trilogue.

Macroprudential Supervision:

The rapporteur recalled the EP position that liquidity risk management plans are an integral part of macroprudential policy and that the notion of supervisory discretion raises issues in this respect. The EP accordingly prefers RTS over guidelines.

The Presidency maintained the Council's position that such plans should be submitted only upon request, but showed flexibility on possible acceptance of RTS.

However, the Commission was concerned with the idea that liquidity risk management plans could be left to the discretion of supervisors and that guidelines could be sufficient. It saw no reason to depart from a requirement applicable to all insurers except small ones. In that respect, the Commission supported the EP approach. Nonetheless, the Commission suggested a possible compromise as follows: only short-term liquidity risk management plans would be made mandatory, whereas corresponding plans over a longer time horizon could be requested at request of supervisors.

The rapporteur pointed out he would need to reconsult internally, but stressed that in his view, according to existing legislation, insurance undertakings already have to deliver these plans without any supervisory discretion.

The Presidency underlined it could show a degree of flexibility in a future discussion, on the basis of the Commission's compromise outlined above, i.e. a short term vs longer term distinction. But this flexibility could only be shown within the framework of a holistic agreement.

Council proposal on securitisation:

The Presidency emphasised the Council's aim to make the Solvency II rules on securitisation more risk-oriented, without undue penalisation. The Council accordingly proposed the addition of a new recital, to call for better regulation and calibration on securitisation, thus improving its potential contribution to the financing of the economy.

The rapporteur noted that the topic was not covered by the Commission Proposal and referred to advice from their Legal Service that it was unusual to introduce some sort of a review clause in the form of a recital.

The Council Legal Service intervened to dispel EP's legal doubts, clarifying that the intention is to use an existing empowerment – as laid down in Art. 111(1)(c).

The Commission held the view that such a recital could plausibly be inserted, subject to proper, risk-based and evidence-based, review, to ensure i.a. a level playing field between asset classes.

The Chair asked the Commission about existing evidence of the need to revisit securitisation in Solvency II. The Commission conceded that there are different views, incl. negative ones, but recognised the debate was not confined to strict technical/ prudential considerations, as indeed there is a political debate on reviving securitisation markets.

The Presidency further reassured the rapporteur the intention is to elaborate a capital charge calibration that is more appropriate and efficient whilst remaining risk-based.

No operational conclusion was drawn.

A.O.B.:

The chair mentioned the option of a possible intermediate date for an extra trilogue before 13 December (tbc).

Next meeting: see table at the end of draft agenda (Annex 1)

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Technical meetings:

The next round of technical meetings will take place on 30 November and 1 December.

Solvency II Review - 2021/0295(COD)

4th Trilogue

Wednesday, 22 November 2023, 15h00-18h00

Room (STR): WEISS S4.2

Listening room (BXL): KOHL 9Y958

DRAFT AGENDA

1. Welcome and adoption of the agenda
2. Feedback and endorsement of ITM work
3. Long-term Guarantees/Long-term Equity (LTG/LTE)
COM non-paper (requested at 2nd Trilogue)
4. Sustainability and Governance
COM non-paper (requested at 2nd Trilogue)
5. Proportionality
COM non-paper (requested at 3rd Trilogue)
6. Cross-border Activities
COM non-paper (requested at 3rd Trilogue)
7. Reporting and Auditing
COM non-paper (requested at 3rd Trilogue)
8. Group Supervision
COM non-papers (discussed at 2nd Trilogue)
9. Macroprudential Supervision
10. Council proposal on securitisation
11. Next meetings and AOB

Meeting schedule

Trilogue	Solvency II	
5.	Week 50 – Wed 13 Dec (STR Dec)	15.00-18.00

Lines in 4CT related to political issues:

Long-term Guarantees/Long-term Equity (LTG/LTE)

- 442b-442d - Art 77(5-5a), risk margin and Cost-of-capital
- 447 and 450a-453, 453b-453d - Art 77a, extrapolation
- 459a-459b and 461b, 461d, 461f - Art 77d, Volatility Adjustment
- 473a - Art 77d, Volatility Adjustment, unexpected credit risk
- 546b+141a - Art 105, Crypto-assets: definition and DA
- 546c-546m - Art 105a, LTE
- 561a - Art 111(1), interest rates negative floor

Sustainability and Governance

- 322b, 324a - Art 44(2), ESG risk management
- 333b-333d - Art 44(2b), ESG risk monitoring
- 378 - Art 51(1a)(b), ESG impact
- 389a - Art 51(1b)(ca), Disclosure
- 389b - Art 51(1b)(cb)), implementation of plan
- 574 - Art 132(5)), ESG risk management
- 978-984c - Art 304a, Review

- 301b-301c - Art 40(2), Governance
- 302b - Art 41(1), Governance
- 304a - Art 41(1), Governance

Proportionality

- 112a - Definition of Significant cross-border activities
- 112 and 115 - definition of Low-risk profile undertaking/group
- 159, 168, 176, 186, 189 - traditional investments
- 160, 160a, 160b: Guidelines or RTS for methodology to classify LRPV
- 164, 171, 179 - simplification
- 166, 173, 184 - significant cross-border activities/premium income
- 170, 178, 188, 189a - Scope/captives

- 175 - Non-life business lines
- 192, 734d - classification when internal model is used
- 200, 200d, 201 - time for supervisors to react
- 206, 209 - all measures to apply vs. limited list
- 218-220 - Art 29e, monitoring
- 232-232f - Art 33a(3), Significant cross-border activities
- 551a - risk modules

Cross-border Activities

- 647-649f - Art 152b, Collaboration platforms
- 652 - Art 153 Cross-border activities
- 654-660 - Art 159a(1) and (1a) Collaboration platform and joint on-site inspections

Reporting and Auditing

- 239-240a: Reporting, frequency of regular reporting [at least/3/5] years
- 292-292b, 409, 431, 902a, 906a, 916a-916c - Art 35b, Reporting, change of deadlines
- 312 - Art 41(3), Proportionality, reporting frequency
- 418a - Audit: exemption of audit requirement for Portugal/Portuguese actuaries
- 440a-440b - Art 64, publication of stress test results

Group Supervision

- 693-694 - Art 212(6), parent undertaking
- 699-713 - Art 213, identification of group
- 705, 737c - Art 213b, scope of group supervision
- 714-716, 737l-737n - Art 211+213b, supervisory powers
- 748a-748l, 688 - Art. 214(3)-(6), parent undertaking and identification
- 789a-789b - Art. 228(5a) - FiCoD review

Macroprudential Supervision

- 596 - 144a(1), mandatory liquidity plan
- 636a-636h - Art 144d, additional tools

Solvency II Review Trilogue - 22 November 2023

2. Feedback from Interinstitutional Technical Meeting

Lines for endorsement

<p> Lines 147-147c Line 163 Line 200, except for [one/two] Line 200d, except for [one/two] Line 201, except for [two/four] Lines 207-207c Lines 240-240a Lines 249-250 Lines 313-322 Line 324 Lines 325-333 Lines 334-346, excluding 337 and 337b Lines 348-349 Lines 349d-377 Lines 379-389 Lines 390-397 Lines 399-408 Lines 410-417a Lines 419-425 Lines 426-427a Lines 428-429 Lines 431b-440 Line 441 Lines 443-446 Lines 448-450 Line 453a Lines 454-458 Lines 460-461a Line 461c Line 461e Lines 462-473 Lines 473b-512 Lines 513-546 Lines 552-561 Lines 561d-562 Lines 564-573 Lines 575-589, excluding 575 </p>	<p> Line 590 Lines 592-595 Lines 603-636, excluding line 610 Lines 637-646 Lines 669-683 Lines 685-692a Lines 695-696 Lines 714-727 Lines 732-734c Line 736 Lines 738-740 Lines 741-745 Lines 747-748 Lines 749-754 Lines 756-786 </p>
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Lines endorsed on 25 October 2023

Line 169a

Line 177a

Line 187a

Line 193b

Lines 200a-200c

Line 200e

Line 237

Line 271a

Line 285

Lines endorsed on 10 October 2023

Lines 95-110

Lines 113-114

Lines 116-118

Lines 121-139

Lines 141

Lines 142-146

Lines 148-155

Lines 158

Lines 160c-160d

Lines 162

Lines 165

Lines 167

Lines 169

Lines 172

Lines 174

Lines 177

Lines 180-183

Lines 187

Lines 190

Lines 193-193a

Lines 194-199

Lines 202-205

Lines 208

Lines 210-217a

Lines 221-224

Lines 226-231

Lines 233-236

Lines 238

Lines 241-248

Lines 250a-271

Lines 272-284

Lines 286-291

Lines 293-301

Lines 303-304

Lines 305-311

