

Flash note: Review of Solvency II

Fifth political trilogue (6th December 2023)

The fifth political trilogue on the Solvency II Review took place in the European Parliament's premises in Brussels on 6th December 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 one shadow rapporteur, Ms Henrike Hahn (Greens), 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 an informal “Building Blocks document” that has been circulated separately to delegations.

Proportionality:

The co-legislators reached a package agreement on this topic, along the following lines.

Regarding the process of **classification** of small and non-complex undertakings (SNCUs, now the agreed terminology), the agreement upholds the NCA's opposition deadlines set out in the Council mandate, namely two months from the receipt of a complete notification (line 200 in 4CT) and four months within the first six months of application of the amending Directive (line 201 in 4CT).

On the **reporting frequency**, the agreement retains respectively 3 years, extendable to 5 years, for the regular supervisory reporting (Art. 35(5a) – option 4 in the Building Blocks document) and at least every 5 years for the reporting on written policies in relation to risk management, internal control, internal audit, remuneration and, where relevant, outsourcing (Art. 41 – option 3 in the Building Blocks document with EP figure).

As to cross border **criteria to identify SNCUs** (Art. 29a), i.e. caps on the annual gross written premium income from business underwritten in MS other than the home MS, the agreement sets the absolute cap at 20 mn€ and the relative cap at 10% of total annual gross written premium income.

Further elaboration was mandated in technical meeting.

Cross-border Activities:

The rapporteur offered the following package: p.m. RTS to frame supervisory discretion (as already agreed at the previous trilogue); alternative 2 from the Building Blocks document for information exchange (i.e., automatic, unless the host explicitly indicates it does not want to receive the information); alternative 1 from the Building Blocks document for EIOPA's own-initiative powers (i.e., ability to request the launch of a joint onsite inspection, and binding mediation limited to issues of information exchange); and Council's approach on thresholds (i.e., 15 mn€ absolute threshold and no relative threshold).

The Presidency replied that it could not accept EIOPA's own-initiative powers. The rapporteur argued that these powers are already enshrined in the EIOPA Regulation, and stressed the importance of his potential concession on the threshold approach.

The item is parked pending Presidency's further consultation of Member States.

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

➤ Risk Margin:

On the back of the 4.5% Cost of capital already (provisionally) offered by the Presidency at the previous trilogue, the Commission suggested adding a review clause with a Level 2 empowerment, so that the Commission could later adapt – not before 2 or 3 years from the date of application – the CoC figure, within a range framed in the Level 1 text (i.e. between 4% and 5%), to take account of interest rate developments.

The rapporteur was unconvinced, arguing that markets would anticipate a rise to the upper bound of the range. The Presidency supported the Commission's suggestion. To address the rapporteur's concern, the Commission suggested postponing the first review to four years after the date of application. The rapporteur showed openness to further discuss, on the basis of a 4-to-5% range, the timeline to start possible adaptations by means of a delegated act.

➤ Extrapolation:

The Commission referred to the floor, and was open to exploring any final solution within the range set by the Council and EP (75%-80%).

The rapporteur pointed out that the EP preferred a higher alpha (between 11% and 12%), hence a higher UFR.

The Chair noted the absence of compromise at this stage – the topic being parked pending the next trilogue.

➤ Volatility adjustment:

The Commission stressed the two outstanding issues: the risk correction, where it referred to the Building Blocks document for the way forward, and the quality overshooting factor, where it could support as a maximum 105% for two consecutive quarters.

The rapporteur read an EP proposed specification, whereby the risk correction: “shall never exceed an appropriate percentage of the long term risk correction spread”. [It was later specified that such percentage would be set at 50%.] The Commission stressed any potential limitation in terms of long-term average spread should only be added in Level 2.

The Presidency offered as a possible way forward to stick to the risk correction approach as per the Building Blocks document whilst accepting that the quality overshooting factor could rise up to 105%. The rapporteur’s oral amendment could not be accepted without further reflection, on the back of concerns that it could reduce the risk-sensitivity of the formula.

The rapporteur took note of the Presidency’s offer.

➤ **LTE:**

The Commission noted the emerging agreement on the basis of the approach specified in the Building Blocks document. This was confirmed, subject to the clarification that the geographical scope would cover both EEA and OECD (to include Lichtenstein), at the rapporteur’s request.

➤ **Interest rate risk:**

The Commission also referred to the approach specified in the Building Blocks document. as the basis for agreement on this topic. The agreement was further confirmed.

Sustainability and Governance:

(The rapporteur noted that the EP could endorse the text prepared in technical meeting.) Regarding additional disclosure requirements of sustainability information, the rapporteur pointed out that the EP sticks with Option 1 in the Building Blocks document (lines 389a and 389b of the 4CT). On diversity aspects, he stressed that individual quantitative objectives could be more explicitly mentioned.

The Presidency confirmed overall support to the direction of work suggested in the Building Blocks document. However, as regards transition plans, the approach laid down in the Building Blocks document should be amended to include a reference to the materiality of risk information to be disclosed. In a similar vein, concerning additional disclosure of sustainability information, the Presidency considered Option 2 (referring to “material exposure to climate risks”) preferable, but still expressed doubts on the potential reference to a non-public document (i.e., the materiality assessment) within such potential disclosure. Concerning governance related requirements, the Presidency considered that Member States’ concerns had been addressed in the Building Blocks document.

The Commission suggested a middle-way approach on additional disclosure of sustainability information, namely that undertakings should disclose whether they were exposed to climate risk, but only in their management report. The Commission also suggested that transition plans should not be disclosed, as it recommended not to mix up prudential transition plans with corporate transition plans. Conversely, it was open to more disclosure on scenario analysis. The Presidency considered that the Commission’s suggestions were worth exploring.

On line 301c (p. 16 of the Building Blocks document), the Presidency also suggested that 10 years should be an appropriate reference period before the year of appointment of the concerned body members.

The rapporteur invited the Commission to provide drafting suggestions on additional disclosure requirements.

On **diversity and gender** (line 304a), there was agreement on the basis of the suggestions laid down in the Building Blocks document.

Reporting and Auditing:

The rapporteur pointed out there were two outstanding issues in his view: the publication of stress test results, and the treatment of Portuguese actuaries. He suggested a trade-off between the two topics. Furthermore, he argued that publication of stress test results would be aligned on similar rules for credit institutions.

The Presidency rejected the suggested alignment with the banking sector, on two grounds: first, insurers do not present the same profile as banks in terms of systemic risk; there is no link to the transmission of monetary policy; second, stress tests in the insurance sector aim to capture macroeconomic risk in the sector through the aggregation of individual results, rather than individual undertakings' situation. Furthermore, the Presidency stressed in this respect the confusing effect that publication could have on the general public.

The Commission leaned towards the EP on publication of stress test results, and downplayed the potential change, arguing there would be no obligation on EIOPA to publish the results, but simply a removal of legal obstacles to using that option.

Regarding the treatment of Portuguese actuaries, the Commission stressed that it could support a well-framed grandfathering, limited to authorisations in force at the time of publication of the amended Directive.

The Presidency rejected the trade-off between the two topics proposed by the rapporteur, arguing the issues were far different. On actuaries, the Presidency could accept the drafting proposed in the Building Blocks document, but suggested deleting "those" (in "*those registered actuaries may continue to provide*"). This was strongly rejected by the rapporteur, on the ground that this was not compatible with a grandfathering.

Regarding the extension of deadlines in exceptional circumstances (Art. 35a), the Presidency, supported by the Council Legal Service, stressed that it was legally not possible to accept a solution based on a Commission implementing act. The rapporteur suggested that the respective Legal services should further consult each other.

Group Supervision – FICOD review clause:

The rapporteur noted that the basis for discussion was not a fully-fledged review anymore, therefore departing from the EP mandate, but a mere report. He could accept option 2 from the Building Blocks document, provided an explicit mention of Solvency II was also added.

The Presidency saw option 1 as an improvement, but stressed that other important issues, such as horizontal groups and removal of impediments to supervision, were not yet covered in the outlined scope.

The Commission noted that the EP was already ready to move towards the Council at the previous trilogue, and pointed out that options 1 and 2 seemed acceptable to it, including with the addition of a mention of Solvency II in the wording laid down in option 2.

However, the Presidency stressed that such potential addition could prove too controversial for Member States, and further explained to the Chair that this was linked to the heterogeneity of conglomerate group structures across Member States. The Chair concluded the issue was parked, pending the next trilogue.

Macprudential Supervision:

Agreement was found on the basis of the way forward proposed in the Building Blocks document, i.e., mandating only short-term liquidity plans. It was also agreed that EIOPA should develop draft RTS under Art. 144d.

Further elaboration was mandated in technical meeting.

Council proposal on securitisation:

The rapporteur noted the draft recital prepared in technical meeting (Building Blocks document) but remained unconvinced as to the added value of including a detailed call for review of securitisation rules.

The Presidency underlined the intention to further support the CMU, and stressed it could accept the alternative drafting laid down in the Building Blocks document.

The Commission stressed that, from its standpoint, the Building Blocks document provided an acceptable solution on both the securitisation and UK data issues.

The rapporteur suggested bundling these with the aforementioned group supervision / FiCOD review addition (with the Solvency II mention). The Presidency declined, arguing these were very different issues.

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

* * *

Technical meetings:

The ensuing technical meeting took place on 7 December.

Solvency II Review - 2021/0295(COD)

5th Trilogue

Wednesday, 6 December 2023, 16h00-18h30

Room (BXL): SPINELLI 5G2

DRAFT AGENDA

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

Meeting schedule

Trilogue	Solvency II	
6.	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 LRPUs
- 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