Comments on Consultation paper 25: CEIOPS-CP-02/08 draft Advice on aspects of the Framework Directive Proposal related to insurance groups

Name company: Groupe Consultatif Actuariel Européen

Please insert your comments in the table below, and send it to secretariat@ceiops.eu in word format. In order to facilitate processing of your comments, we would appreciate if you could refer to the relevant section and/or paragraph in the consulted document.

Reference	Comment
General comment	1) Diversification itself has nothing to do with fungability and transferability. Diversification will exist also in case of a lack of transferability and fungability. Only a lack in fungability will impact the USE of diversification effects. Groupe Consultatif is happy to work on a paper explaining the link between fungability, transferability and the impact on the use of diversification effects. 2) If needed we will also work with CEIOPS to analyse the ways in which group diversification effects can be allocated back to the solo entities and to understand what purpose such allocations would serve. **3)** An issue that seems to require more attention is the application to groups with a mixture of mutual (or semi mutual) and shareholder companies. The area is obviously complex, and we believe the way forward is to distinguish between risk capital provided by various groups of policyholders and risk capital provided by shareholders. Whilst it would be easy to apply added restrictions on mutual enterprises, it should not be the intention to disadvantage "mutual groups" just because the risk capital is supplied by policyholders rather than shareholders
11	What is stated under 11 is true, but the opposite might also be relevant (i.e. the requirement to transfer funds to a third country might be less onerous than for an EU country).
14	It is not so much the diversification effects rather the availability of capital transfers from the third country that needs to be considered. The inclusion of third country undertakings will make the requirements for group wide integrated risk management an important consideration.
16&18	We are not convinced that the directive requires a prospective assessment of the group's ability to meet future SCRs (the SCR measure in itself is prospective in nature), even if prudent supervision would always include such an assessment. We see no

Comments on Consultation paper 25: CEIOPS-CP-02/08 draft Advice on aspects of the Framework Directive Proposal related to insurance groups	
Name company: Groupe Consultatif Actuariel Européen	
	reason to treat a group differently from a solo entity in this respect
23	Whether or not there is a fee for supplying a capital commitment seems to be an internal and tax matter for a group and not directly of concern for solvency purposes,except for the fact that the costs needs to be part of the SCR calculation
29	Some bullets in 29 would benefit from further explanation. In particular it is not evident what extra commitment from the parent is implied by 'responsibility for guaranteeing policyholder rights'. Taken literally such a guarantee would be more onerous than the Commission's draft directive would suggest. Also it would be useful to elaborate what is envisaged under 'responsibility for updating the content to adapt to future circumstances' The criteria associated with the minority view need explanation of their rationale.
38	Section 38, point 1, deals with the situation where the group has sufficient own funds to satisfy its group SCR. The subsection suggests that if the subsidiary has used group support to satisfy its SCR in the past, then the parent can eliminate the group support declaration as long as the parent and subsidiary satisfy their MCR requirements. We believe the support agreement should be extinguished only if the subsidiary has sufficient own funds to meet its SCR requirements. Otherwise, the 'capital support' provided by the parent does not have the long-term expected nature of capital, and the policyholder protection in the subsidiary is reduced. If the group has sufficient eligible own funds for group SCR, but not enough to fund the SCR for the subsidiary, then the group support agreement should remain in place. Section 38 point 2 suggests that the commitment can be terminated if the funds to meet the obligation are not sufficient. We agree that the actual transfer of funds may not be possible; however, we believe the commitment should remain so that if eligible assets are created at a future data somewhere in the group via recapitalisation, sale of a subsidiary, eligible own funds released as the liabilities are runoff, etc., then those funds can be committed to meet any gaps in funding the initial group support agreement.
43	In Annex1 CEIOPS notes that own funds consists of assets and liabilities.

Comments on Consultation paper 25: CEIOPS-CP-02/08 draft Advice on aspects of the Framework Directive Proposal related to insurance groups	
Name company: Groupe Consultatif Actuariel Européen	
	We note that own funds can be increased by moving risk rather than capital. Reinsurance between group and subsidiaries is a way to move risk and hence reduce required capital A Group support arrangement should not exclude the use of such other remedial action
47	CEIOPS refers to "… sufficient liquidity of assets transferred..". In our opinion what matters is the liquidity of the entity not the assets transferred.
54	Paragraph 54 deals with the situation in which there may not be sufficient eligible own funds in the group to fully satisfy SCR requirements of the group. The first bullet of paragraph 54 suggests that the parent's obligation is limited by the parent's need to satisfy its own SCR and says that otherwise the parent's policyholders would have less protection than those in the subsidiary. We think this is not correct. Unless the parent pays funds until it meets the 'equal protection' criteria the policyholders of the subsidiary have less protection than those in the parent Bullet 2 of paragraph 54 appears to correctly state the equal protection principle. However, the statement is explicitly made only for 'subsidiaries' when we think that the statement applies to the parent and the subsidiaries. Bullet 3 of paragraph 54 provides that there should be no redistribution of unfulfilled liabilities. While this is desirable from one perspective and consistent with the requirement that supervisors do not block transfers provided an entity has sufficient own funds to cover its MCR this could frustrate Art 244(1). Paragraph 54, 1st bullet, refers to the "parent …access to group support from *participating* subsidiaries." Does CEIOPS mean 'from subsidiaries in which the parent participates'?
62&64	We do not entirely agree. Whilst protection of policyholders is a critical issue, it still needs to be recognized that in many cases (in particular regarding mutual companies) it is the policyholders that are providing the risk capital. If policyholders are providing risk capital then they should expect to participate in the relevant risks and rewards. This may well include the risk/reward of owning a shareholder company. An example of this might be a mutual company that owns a unit linked company. If the unit linked company performs well, then the mutual company (and thus its policyholders) will be rewarded through dividends from the unit linked company, which then translate to additional bonuses for the mutual company's policyholders. If there are financial problems in the unit linked company, then the mutual company would be expected to

Comments on Consultation paper 25: CEIOPS-CP-02/08 draft Advice on aspects of the Framework Directive Proposal related to insurance groups	
Name company: Groupe Consultatif Actuariel Européen	
	support its subsidiary financially and bonuses for the mutual company's policyholders will be depressed as a result. There is nothing wrong or unusual in this, but it does mean that policyholder participation in future profits is naturally a function of requirements to transfer funds around a group.
67	CEIOPS implies that it is necessary for a group to have capital in excess of group SCR in order to deliver support. Although it may well be true in some cases we do believe it is a necessary condition for all groups in order to meet the conditions in the Directive.
87	This refers to Articles 41 to 49. CEIOIPS discusses some of the functions but not the actuarial function We think that a group actuarial function could be quite 'light touch' – serving to coordinate the actuarial functions which sit within the subsidiaries. However some groups may wish to provide a full range of actuarial services at Group level. Several of the listed roles in Article 47.1 would not seem appropriate (and would be unnecessarily replicated) at the group level. GCAE will be pleased to work with CEIOPS to provide any necessary elaboration on this aspect Similar questions can be asked of the relationship between the group and subsidiary compliance function (Art. 45), the internal audit function (Art. 46) and re outsourcing (Art.48)
	.
120	If needed we will also work with CEIOPS to analyse the ways in which group diversification effects can be allocated back to the solo entities and to understand what purpose such allocations would serve.
Annex1	There are other methods for transferring capital, although they are probably jurisdiction dependent. For example in Sweden it is possible (under certain conditions) for subsidiaries in a group to move capital to a parent company tax free and without reference to dividends/buy back etc (in Sweden this is called "koncernbidrag").