

**Comments Template on CEIOPS-  
Consultation Paper on the Draft L2 Advice on SCR Standard Formula – Article 109 j**

**Simplifications/Specifications for captives**

Name of Company:	FERMA (Federation of European Risk Management Associations)	
Disclosure of comments:	CEIOPS will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments should be treated as confidential:	No
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <b>Do not change the numbering</b> in the column “reference”.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> <li>○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.</li> <li>○ If your comment refers to sub bullets/subparagraphs, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:secretariat@ceiops.eu">secretariat@ceiops.eu</a>. Our IT tool does not allow processing of any other formats.</b></p>		
<b>Reference</b>	<b>Comment</b>	
General Comment	FERMA appreciates being given the opportunity to provide preliminary comments at the request of CEIOPS on this draft paper which aims at simplifying the calculations of the Solvency Capital requirement for captives, recognizing the need for actions being proportionate to the nature and the	

**Comments Template on CEIOPS-  
Consultation Paper on the Draft L2 Advice on SCR Standard Formula – Article 109 j**

**Simplifications/Specifications for captives**

	complexity of the risks inherent to the business of the insurance or reinsurance undertaking.	
1.		
1.1.		
1.2.		
1.3.		
2.		
3.		
3.1.		
3.2.		
3.3.	<p>FERMA would like to remind that captive insurance &amp;/or reinsurance undertakings' underwriting process applies to very specific exposures and is not competing the so-called commercial market but is rather to be considered as an important risk management and mitigation tool for undertakings.</p> <p>FERMA is supporting the idea that the new solvency regime should not be too burdensome for insurance and reinsurance undertaking who specialise in providing specific types of insurance or reinsurance to specific customer segment.</p> <p>Too important additional capital or indirect increase of management charges could easily lead to major hurdle to the use of this model and deprive undertaking from an important so far efficient and reliable risk mitigation and management tool.</p>	
3.4.		
3.5.		
3.6.	For the sake of the application of the simplifications, FERMA believes it is opportune to make a distinction between the Captive Insurance & Captive Reinsurance undertakings. The restrictions applied to groups of undertakings are too heavy.	
3.7.		

**Comments Template on CEIOPS-  
Consultation Paper on the Draft L2 Advice on SCR Standard Formula – Article 109 j**

**Simplifications/Specifications for captives**

3.8.

Option 1A (a):

The criteria that limits the access to the simplification model to contracts where all insured persons are legal entities of the group of the captives is too restrictive for captive insurance and reinsurance undertakings dealing –for example - with Joint Ventures. FERMA would appreciate the definition of the legal entities to be extended to all legal entities in which the group of the captive participation is higher or equal to 50%.

In Share Purchase Agreements, it is usual to find clauses that extend the benefit of the coverage after the closing date.

The Perimeters of Insurance Programs are potentially changing during the insurance/reinsurance period. FERMA considers the limitation to legal entities part of the Group at the time the contract was entered into too restrictive.

Option 1B (a):

The limitation to undertakings where all insureds and beneficiaries are legal entities of the group is excluding all undertakings that are underwriting Liability Insurance and raises various important questions in employee benefits matters.

In addition, FERMA considers that the fact the liability for indemnification of beneficiaries lays in principle with the leading direct insurer, respecting solvability calculation rules ensures beneficiaries' protection.

(b) FERMA would rather see a distinction between Reinsurance and Insurance undertakings in this matter. Indeed when a captivated reinsurance contract is set up, there is always a ceding undertaking that is supporting the liabilities towards its insured. In addition, the existence of an insurance contract, even though compulsory, does not prevent the undertaking from its legal liability towards the third party it caused a damage too. Finally the Third Party Liability Insurances being compulsory by Law vary country by country. This restriction could potentially put captive undertakings with the same risks profile in a different position even within the EU.

(c) FERMA supports option 2B because : (i) Ceding companies should be considered as professional insurers that are liable towards their direct insurers whatever the name of the reinsurer is. They should

JR

**Comments Template on CEIOPS-  
Consultation Paper on the Draft L2 Advice on SCR Standard Formula – Article 109 j**

**Simplifications/Specifications for captives**

	underwrite captivated exposure within the framework of their internal underwriting guidelines and policies as they do with other commercial co- or re-insurers. This thought process is supported by the fact that the confidence level for captive is fixed at 99.5% as it is for commercial insurers and reinsurers.	
3.9.		
3.10.		
3.11.		
3.12.		
3.13.		
3.14.	<p>There is a significant exposure for captive to be considered as pure “funding tools” which could have a significant impact on the fiscal treatment of both premium charges and claim settlement for original insureds.</p> <p>FERMA considers that the simplifications should not lead to additional constraints for captive and in any case should not jeopardize the existence of the model which is an important support to risk management.</p>	
3.15.		
3.16.		
3.17.		
3.18.		
3.19.		
3.20.		
3.21.		
3.22.		

**Comments Template on CEIOPS-  
Consultation Paper on the Draft L2 Advice on SCR Standard Formula – Article 109 j**

**Simplifications/Specifications for captives**

3.23.		
3.24.		
3.25.		
3.26.		
3.27.		
3.28.	Captives should be able to make their own investment decisions, following the investment guidelines of their Parent Company	
3.29.		
3.30.		
3.31.		
3.32.		
3.33.		
3.34.	FERMA is of advise that there a "fiscal exposure" to legally effective guarantee by the captive owner with the same consequences as these outlined on paragraph 3.14	
3.35.	As per 3.14 & 3.34 FERMA believes that the effects of such principle is counterproductive for captive undertakings.	