

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

Name of Company:	<b>AMICE</b>	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	All comments are public.
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Do <b>not</b> change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:cp008@eiopa.europa.eu">cp008@eiopa.europa.eu</a>. Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the paragraphs refers to Consultation Paper 008.</p>		
<b>Reference</b>	<b>Comment</b>	
General Comment	<p>AMICE welcomes the opportunity to comment on EIOPA's Draft Guidance for the ORSA and is particularly appreciative of the fact that this consultation is already taking place now before the formal consultation process on Level 2 measures starts.</p> <p>We support the general approach of the document putting substance over form, i.e. focussing on what is to be achieved rather than how it has to be achieved. However, some guidelines and/or explanatory text deviates from this approach and seems to intend to micromanage the ORSA process. This is in our view inappropriate as it contrasts with the declared purpose of the ORSA, namely to be a <b>management tool rather than a supervisory tool</b>.</p> <p>That the ORSA is designed and meant to be a management tool has for us several key</p>	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

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20 January 2012  
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consequences:

- The ORSA **must not serve to calculate a regulatory capital requirement**. This is explicitly ruled out in the level 1 text.
- The guidelines should be **principles-based throughout** and abstain from unnecessary prescription.
- The ORSA process must be fully **subject to proportionality considerations**. Since it is not a supervisory tool, it is **essentially the undertaking itself that determines the application of proportionality** in function of the nature, scale and complexity of its risk.
- The (internal) ORSA report should not constitute a standalone tool in the undertaking's management reporting system, but be imbedded in and part of that system. To enable this, it is necessary not to overdefine this report and to make it possible that information available in other management reports can be included by reference.
- The subsequent (external) report to the supervisor should be seen as deriving from the internal report, should document the fulfilment of the requirements of the ORSA process which – again – is an internal one for the benefit of the insurer's management.

AMICE members in general acknowledge and appreciate the value of the ORSA process. To achieve the intended aim of raising the awareness in the undertaking of the implications of their business plan on their capital and vice versa, **it is however necessary that smaller and medium-sized undertakings are assisted in embarking on this valuable self-assessment exercise**. In addition to the application of proportionality as mentioned above, we believe therefore that two support measures are necessary:

- Either as an annex to the guidelines (which are, after all, addressed to insurers as well as to supervisors) or as supporting material, it would be highly valuable to get **an example for a basic ORSA report**. While such a good practice example would of course have to be completely non-binding, it would serve particularly smaller insurers extremely well in overcoming their initial uncertainties and would help them, too, to discover the benefits that a structured and well-done ORSA process can bring to every insurer and its management – and after all to the stability of the sector and the safety of the policyholders.
- AMICE members are looking forward to good **and constructive cooperation with their**

<b>Comments Template on CP8 -Draft proposal for Guidelines on ORSA</b>		<b>Deadline 20 January 2012 12:00 CET</b>
	<p><b>supervisors.</b> It was often said that Solvency II is a <b>joint learning process</b> for industry and supervisory community. This is particularly true for the ORSA. Our members hope that their supervisors will see the development of a meaningful and informative ORSA also as a joint learning process, implying the <b>possibility for step-by-step improvement</b> in the process and in the knowledge of the undertakings.</p>	
3.1.	<p>We feel that the wording chosen (“... is to be interpreted ...” stands in contrast to the “comply or explain” character of EIOPA’s non-binding guidelines.</p> <p>The clarification to whom the guidelines are addressed (in view of the ambiguity of Art 16(1) of the EIOPA Regulation – “... addressed to competent authorities or financial institutions”), should be clearly given in the introduction of the Guidelines (maybe together with the text of par. 3.41)</p> <p>Reporting procedures and deadlines on compliance (par. 3.42 and 3.43) should stay at the end.</p>	
3.2.	<p>We welcome the focus on <u>what</u> is to be achieved rather than on <u>how</u> it is achieved.</p> <p>Of equal importance is for us the clarification in this paragraph that the assessment represents <u>the undertaking’s own view</u> and the consequent conclusion that <u>the undertaking should decide for itself</u> how to perform the assessment appropriately, given the nature, scale and complexity of its risk.</p> <p><b>The application of proportionality is therefore clearly entrusted to the undertakings themselves.</b></p> <p>This is in line with our view that the ORSA is a strategic tool for managing the undertaking (cf. Rec 36 and Art 45(4) L1). This statement is in our view so important for insurers and for the supervisory community that we strongly suggest adding it to Guideline 1 and to the explanatory text to this guideline.</p>	
3.3.		
3.4.		
3.5.		
3.6.	<p>From the use of the “or” between “administrative, management <u>or</u> supervisory body”, we deduct that more than one body (e.g. the administrative and the supervisory one) can be involved.</p> <p>We share EIOPA’s idea that the AMSB responsibility is to ensure that the process is properly</p>	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

	conducted and that the conclusions are being challenged. Beyond this, it should be the AMSB's duty to structure the ORSA process, involving the components of the AMSB as well as other levels of management in the undertaking.	
3.7.	The assessment should in no case (and not only "not necessarily") call for an approach that is more complex than the standard formula. We suggest deleting the word "necessarily". See the very clear instruction in Rec 36 L1.	
3.8.	It would be useful to clarify that this introductory recital relates to users of the standard model.	
3.9.		
3.10.		
3.11.		
3.12.		
3.13.	See our comments on 3.1.	
3.14.		
3.15.	<p>We appreciate that the Guidelines start off with a Guideline on proportionality and that the text now includes a clear reference to proportionality as it is defined in the L1 text, namely to nature, scale and complexity of the risks inherent in the business of the undertaking.</p> <p>We regret, however, that we still do not find a reference to the declared purpose of proportionality, namely to ensure a proportionate application of the Directive in particular to small insurance undertakings. Necessary investments and following compliance costs must be scalable to avoid competitive disadvantages that could threaten the existence of smaller undertakings with non-complex risks</p> <p>Given the importance of the statement in per. 3.2., we strongly suggest including in the guideline a passage emphasising that the application of proportionality is entrusted to the undertakings themselves. See our comment on 3.2.</p>	
3.16.	We suggest deleting the words "the undertaking should ensure that".	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

3.17.		
3.18.	<p>As mentioned, we appreciate the intention by EIOPA to focus on the desired outcome of the ORSA process. This Guideline, however, clearly focuses on the methods and micromanages the process. This in contrast with par. 3.2.</p> <p>EIOPA justifies the requirement of a written ORSA policy (in par 4.13., 5.26, 5.36 and 5.48) with the fact that risk management includes the ORSA (according to Art. 45(1) L1).</p> <p>We question this conclusion and propose to eliminate the requirement for a self-standing ORSA policy document. In our view , EIOPA’s own reasoning implies stringently that the ORSA policy may be part of the risk management policy according to Art. 41(3) L1. Through the wording of Art.45(1) L1, the ORSA is defined as an integral part of risk management, at the same level as the elements enumerated in Art. 44(2) letters (a) through (f). We conclude that the risk management policy whose contents is circumscribed in the last subparagraph of Art. 44(2) could include a section on the ORSA policy. In the case that EIOPA share this view, we suggest a clarification in the explanatory text on Guideline 3.</p> <p>If still required, the ORSA policy as such should be limited to the issues under letters a and b, perhaps complemented by a policy statement on frequency and trigger events. We do not see a reason why methodological details have to be included in an ORSA policy. In particular, the requirement to include information on data quality requirements in the ORSA policy is for us unwarranted.</p> <p>We welcome the choice of words “consideration” (replacing “description”) of the link ... and “information” (replacing “details”) on ...</p>	
3.19.		
3.20.		
3.21.	<p>The possibility to use other valuation methods that better reflect the characteristics of the business is appreciated. However, the ensuing obligations are regarded as too onerous. Particularly in the view of proportionality, it should suffice to describe the differences to the</p>	

<b>Comments Template on CP8 -Draft proposal for Guidelines on ORSA</b>		<b>Deadline 20 January 2012 12:00 CET</b>
	Solvency II basis and to assess why the different methods used are appropriate.	
3.22.		
3.23.	Not all risks from which an overall solvency need arises are quantifiable. We suggest the following wording: “... in quantitative terms, where possible, and complement the quantification by a qualitative description of the risks, including the non-quantifiable ones.”	
3.24.	We preferred the text of Guideline 9 of the December 2010 draft which talked about “... provid(ing) an adequate basis for risk and capital management purposes” (and not only for the assessment of overall solvency needs).	
3.25.	Long-term projections of the overall solvency needs according to the business plan of the undertaking can be extremely onerous for smaller undertakings, and also in the case (regardless of undertaking size) of long-tail business, both in life and non-life. We believe that the elements of flexibility indicated in par. 4.35 do not suffice to provide the opportunity for applying appropriate proportionality.  Applying proportionality is a task for the undertaking itself (see our comments on par. 3.2). It still would be helpful if EIOPA could clarify ex ante that – in line with its assessment of the nature, scope and complexity of its risks – the undertaking may use simplified long-term projections and combine calculated capital requirements over a shorter time horizon with qualitative assessments over longer periods, based on multi-year developments.	
3.26.	ORSA is a process and, as we have positively commented, the aim is obviously to put results over form. We find therefore that this guideline is too descriptive because it requires certain procedures rather than requiring an assessment.  It should be clear that “potential future changes” need only be anticipated for the business planning period. As we comment under 3.25., even this is challenging or partially outright impossible in the case of long-tail business.	
3.27.		
3.28.	As commented under 3.23., not all risks are quantifiable. Likewise, there are also deviations that	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

	<p>are not quantifiable, even if they may be “material”.</p> <p>Par 4.50 explains that “information on the assumptions on which the SCR calculation is based will be made available to undertakings.”</p> <p>We would like to emphasise that it is essential for undertakings to be informed of these assumptions <b>as soon as possible</b>. Following suggestions from the European Commission, EIOPA, and national supervisors, AMICE members are already carrying out test-ORSA. The closer these tests can be carried out to future reality, the better prepared the undertakings will be for the real case.</p>	
3.29.	<p>With a view to Art 45 L1, we suggest clarifying that this Guideline addresses the link to the <u>strategic</u> management process. In this context, we argue that product development and design should be left out of the list of areas where ORSA results should be directly taken into account.</p>	
3.30.	<p>We understand that the standard case will be an annual ORSA and that interim ORSAs will in principle be triggered by particular events, such as a significant change in the risk profile (Art. 45(5) L1 and par. 4.73).</p> <p>Some of our members would appreciate an indication of when in the year (probably related to the reporting cycle) an annual, regular ORSA could be expected.</p>	
3.31.		
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3.37.	<p>We regard the new wording “should identify” preferable over the previous wording “should describe”.</p>	
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3.39.		

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

3.40.		
3.41.	See our comments on par. 3.1.	
3.42.		
3.43.	Art 16 (3)of the EIOPA Regulation requires such reports only “if required by that guideline”. We do not think that such reports should be required and therefore suggest deleting this paragraph. ORSA is mainly a management tool and not a supervisory tool. Through the (external) ORSA report and through the ongoing supervisory process, the supervisors have the possibility of assessing the quality of the undertaking’s ORSA and the compliance of the assessment with the requirements of levels 1 and 3. We see no reason for and object to any publication of the undertakings’ ORSA compliance and see no role for peer pressure in this context	
3.44.		
3.45.	Does not exist ☺.	
4.1.		
4.2.	EIOPA uses the term “overall solvency needs” throughout the document. We suggest substituting it with a more generic term, such as “capital needs” in order to avoid confusion. After all, it is one of the key clarifications on L1 in this context that <b>the ORSA shall not serve to calculate a capital requirement.</b>	
4.3.		
4.4.		
4.5.		
4.6.	See our comments on 3.15.	
4.7.	We welcome the clarification that proportionality applies not only to the complexity of methods, but also to the <u>granularity of the different analyses</u> .  However, we see no strong basis for a link between proportionality and the frequency of the ORSA. In our view, an annual ORSA is the standard case and intermediate ORSAs would be triggered rather by events (e.g. significant changes in the risk profile) than by nature, scale and	



**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

	<p>complexity of its risks.</p> <p>Given the importance of the statement in per. 3.2., we strongly suggest including in the guideline –or at least in a new explanatory paragraph a passage emphasising that the application of proportionality is entrusted to the undertakings themselves. See our comment on 3.2.</p> <p>See also our comment on par. 3.30, resulting from an uncertainty about the appropriate timing of the ORSA9s) during the financial year.</p>	
4.8.	See our comment on par. 3.6.	
4.9.		
4.10.		
4.11.	<p>The obligation to “challenge the assumptions” expects a very high level of expertise at the competent AMSB. We suggest therefore the following amendments and clarifications:</p> <ul style="list-style-type: none"> <li>• It would be useful here (as it is being done in other places) to emphasise that challenging the assumptions is an obligation of the AMSB as a whole (collectively). The ability to challenge must not be expected from all individuals in the AMSB.</li> <li>• It must be possible for the AMSB to “outsource” the technical part of the assessment and to retain the final responsibility to validate conclusions.</li> <li>• Given the described difficulties, we suggest replacing the word “challenge” with “monitor”.</li> </ul>	
4.12.	<p>The wording “ensure that solvency needs can be met even under unexpectedly adverse circumstances” is in contradiction to</p> <ul style="list-style-type: none"> <li>(a) the non-zero-failure concept of Solvency II and</li> <li>(b) the character of the SCR as an early warning indicator.</li> </ul> <p>If EIOPA means to say that capital needs should be met even under adverse circumstances, this term (capital needs) should be used – see also our comments on par. 4.1.</p>	
4.13.	As commented above (par 3.18.), we see no justification for excluding that the ORSA policy be an integral part of the risk management policy of the undertaking.	
4.14.	As the ORSA process, in particular in larger organisations, is a combination of many individual	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

	<p>processes, some of which may already be fully documented and others less, we seek clarification that the “ORSA record” can be a compiled collection of records of the various processes constituting the overall ORSA process.</p> <p>Letter (k): see our comment on par. 4.11. (replacement of “challenge” with “monitor”).</p>	
4.15.		
4.16.	<p>We feel that confusion could arise between the “ORSA record” as addressed on guideline 5 and its explanatory texts, the “ORSA internal report” addressed in Guideline 6 and the report on the result of the ORSA to the supervisor (Art 45(6) L1).</p> <p>With regard to EIOPA’s linkage of the internal report to the report to the supervisor, we emphasise that the ORSA is designed as a strategic tool for management purposes and not a supervisory tool (see the emphasis by EIOPA in par 4.9, 5.10 and in particular 5.49).</p> <p>We very much welcome the conclusion by EIOPA, laid out in par.5.39 to 5.42 and 5.49, that no structure for the ORSA (results) report to the supervisor should be prescribed. We suggest therefore deleting the “if” clause in the second sentence of par 4.16.</p> <p>On the other hand, it would be appreciated if EIOPA could specify somewhere in the Guidelines (since par 3.20 through 3.27 of the December 2010 draft were not taken up) that the information to be reported to the supervisor may be based on internal documentation.</p> <p>Suggestion (although the explanatory text then does not fit ideally with guideline6): “The ORSA supervisory report could be based on the internal report [developed by the undertaking] or indeed on any other internal ORSA documentation.”</p> <p>N.B.: The internal ORSA report is only very cursorily referenced to Art. 45 L1. A clearer indication of the legal basis for this internal report could be useful.</p>	
4.17.		
4.18.	<p>See our comments on par. 3.25 and 3.28. We question the usefulness (and often the possibility) for certain types of long-tail business to make projections over the whole business planning period on an adequate basis.</p>	
4.19.	<p>MMA: We welcome the explicit mentioning of risk mitigation tools.</p>	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

4.20.	Some AMICE members would appreciate more clarity on the concept of “materiality” in this context. Such clarity, however, needs not necessarily be provided through guidelines, but could also be the result of a meaningful discussion process between supervisor and undertaking. In any case, clarity about what is material in this context is necessary in advance and not only during the ex-post assessment of the undertaking’s ORSA process/report.	
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4.28.	The third sentence seems to start from the assumption that all risks are somewhat quantifiable (even if applying more or less judgment). Since this is definitely not the case (see also our comments on par. 3.23), we suggest the following amendment: “It could be ‘pure’ quantification ... scenarios, more or less judgmental <b>or purely qualitative.</b> ”	
4.29.		
4.30.		
4.31.	Letter (c) is overly detailed; beyond the “quality of processes and inputs”, it is completely repetitive to letter (b) since the system of governance is one of the systems included in letter (b).	
4.32.		
4.33.	In addition to our comment on par. 3.25, some of our members would appreciate acknowledgement that the time horizon for business planning is rarely identical with (and may differ considerable from) the time horizon for which cash flows can be projected.	
4.34.		

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

4.35.	<p>See our comments on 3.25</p> <p>Scenario testing is a complex and burdensome process; testing “a range of scenarios” may well go beyond the capacity of small and medium-sized non-complex insurers. Replacing “a range of possible scenarios” with “relevant scenarios” allows the undertaking (which is after all responsible for applying proportionality to its ORSA) to make a useful decision about the relevance of alternative scenarios.</p> <p>We are disappointed that it is only in par 4.38 that proportionality is mentioned in the explanatory text on Guideline 10. Mentioning proportionality only in the context of stress testing scope and frequency is not sufficient.</p>	
4.36.		
4.37.		
4.38.		
4.39.	MMA: Members would appreciate an explanation or examples of the case mentioned under item (b).	
4.40.	Our members are made suspicious by the particular emphasis here that “continuous compliance does not constitute an obligation to recalculate the full regulatory capital requirements all of the time”. This is already clearly spelt out in Rec 36 and Art. 46(7) of L1.	
4.41.		
4.42.		
4.43.		
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4.45.	The adequate “available timeframe for remedial actions” should – notwithstanding the L1 text – be judged in accordance with the characteristics of the business of the undertaking, notably in the case of very long risks (such as in pension insurance.	
4.46.		
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**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

4.48.	Some of our members seek clarification to what risks “arising from the calculation of the TP” are addressed in this paragraph.	
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4.50.	See comments on par 3.28.	
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**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

4.71.		
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4.74.	We do not understand this sentence. See also our request for further guidance on the appropriate timing of the ORSA in relation to the (financial) reporting cycle.	
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**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

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**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

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<b>Comments Template on CP8 -Draft proposal for Guidelines on ORSA</b>		<b>Deadline 20 January 2012 12:00 CET</b>
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Q1.	The guidelines are generally clear; in a few places, we have in our detailed commenst indicated that one or the other clarification may be warranted.	
Q2.	We understand from singular comments that the level of clarity is lower in the section on the ORSA in groups. We havem however, generally abstained from commenting on theses ections of the consultations paper.	
Q3.		
Q4.	<p>Unless the application of proportionality is granted, many of our small andmedium-sized members see onerous obligations in several areas. We have clearly pointed them out in ourdetailed comments. Scenario testing and data quality requirements are among the issues that create the greatest concern.</p> <p>Overall, we notice a great “fear of the unknown beast” at many of our members with regard to the ORSA process. It would therefore be very helpful – and serve the smaller undertakings as well</p>	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

	as their supervisors and indirectly also their policyholders – if EIOPA could provide a textbook example	
Q5.	In the absence of level 2 material on the ORSA, the guidelines give valuable orientation for the undertakings how to approach the obligations to perform the ORSA, to plan their policy for it and to report about it. The culture and practice of doing something like an ORSA certainly differs considerably between Member States. Thus, the guidelines provide an important tool towards harmonisation and the creation of a level playing field.	
Q6.		
Q7.	<p>On option 1, we agree that the guidelines are a useful tool to complement the level 1 provisions on the ORSA.</p> <p>On option 2, we agree that the ORSA process in the undertaking has to be guided by an ex-ante established policy. We do however not agree that the level 1 text calls for or even indicates the need for a detailed, self-standing ORSA policy. The ORSA is part of the risk management; therefore, the ORSA policy should be part of the risk management policy. In addition to the decision to require a separate ORSA policy (whci we do not endorse), EIOPA partially overprescribes details this policy has to include, thus ignoring that the ORSA is menat to be an internal management tool for the undertaking and not a supervisory tool.</p> <p>On option 3, we appreciate that EIOPA abstains from providing detailed guidelines and examples on the ORSA supervisory report. Nevertheless, we believe that it would be most valuable for small undertakings if EIOPA developed a sort of textbook example for the ORSA report. Such a good practice example should not form part of the guidelines as it should remain completely non-obligatory.</p> <p>On option 4, we agree that the qualitative assessment of the deviation should be the starting point and general requirement and that quantitative assessment should only be required if there is a strong cause for it (significant deviation <u>and</u> material impact).</p>	
Q8.	Requirements for smaller undertakings will only be appropriately proportionate if supervisors acknowledge that <b>the application of proportionality lies within the respnsibility of the</b>	

**Comments Template on  
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline  
20 January 2012  
12:00 CET**

	<p><b>undertaking</b> since the ORSA is a management tool and not a supervisory tool. This fundamental principle needs still to be clarified and strengthened in the guideline – otherwise the guideline will possibly fail to meet the proportionality objective.</p> <p>We agree that the introduction of the ORSA process as such is a great step towards improving the risk management of many insurers, thus of the industry as a whole. The guidelines underline this. To make the introduction of the ORSA in Europe a full success, it will however be necessary for insurers and their supervisors to embark on a joint learning process, thus overcoming the fear of the unknown (particularly in small undertakings) and enabling the insurers to gradually develop this truly valuable assessment tool.</p>	
Q9.	<p>We do not think that it is necessary to oblige insurers to expressly report whether they comply with this guideline. Art 16(3) leaves it open whether such reports by undertakings should be requested in a guideline.</p> <p>See also our comment on par. 3.43.</p>	