

Comments Template on CP8 -Draft proposal for Guidelines on ORSA		Deadline 20 January 2012 12:00 CET
Name of Company:	FRC	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ 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>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to cp008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the paragraphs refers to Consultation Paper 008.</p>		
Reference	Comment	
General Comment	<p>The FRC is the UK's independent regulator responsible for promoting high quality corporate governance and reporting. We are independent from those we regulate and Government. We focus on high quality regulation that supports investment in the UK to generate economic growth and employment.</p> <p>We set standards for actuarial work for IORPs and insurers through the Board for Actuarial Standards. We set standards for financial statements through the Accounting Standards Board and the work of auditors through the Auditing Practices Board. We are also responsible for the UK's Corporate Governance Code which sets out standards of good practice in relation to Board leadership and effectiveness, including risk management, remuneration, accountability and relations with shareholders. The FRC executive includes actuaries with pensions and insurance</p>	

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expertise and other professionals such as accountants and lawyers.

We support the EU's Smart Regulation agenda. We consider that regulation should be principles based where appropriate, be targeted, implemented at the right level, and be proportionate. We also consider that an impact assessment should be an essential part of the formulation of any new or change to existing regulations.

We are concerned that there is a risk that the ORSA including the work required to meet the Directive requirements and reporting becomes disproportionate forcing insurers to incur significant cost relative to their risk appetite. These guidelines are an opportunity to ensure the ORSA process remains proportionate.

The guidelines lay particular emphasis on quality of documentation and the information that should be reported (guidelines 3 – 6) and indicates that a wide range of stress/scenario tests might be required (guideline 9). The explanatory text goes into considerable detail concerning the work required and the reporting. We are concerned that this emphasis encourages a disproportionate response.

We are also concerned that the guidelines do not make clear exactly what the ORSA is. One interpretation might be that it is a quantification of the amount of capital required over the business planning period supported by a rationale. The rationale should be sufficient for management to be able to take appropriate actions as the business environment develops through the planning period.

We also suggest a number of smaller points based on our experience of standard setting which we consider help in ensuring good, clear and effective regulation.

We would welcome the opportunity to work with EIOPA in developing these proposals for Guidelines in support of the Directive and its Implementing Measures.

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3.15.	<p>Guideline 1 adds very little to Article 45(2) of the Directive. We therefore suggest it is amended to provide more guidance on what a proportionate response to the requirement to conduct an ORSA entails.</p> <p>Article 45(2) allows for the processes to assess the overall solvency needs to be « proportionate ». We accept that determining what is proportionate is a matter for judgement. The proposed guideline requires the use of « appropriate and adequate techniques to assess its overall solvency needs ». We consider that deciding what is « appropriate and adequate » will require similar judgement to deciding what is proportionate.</p> <p>The proposed guideline requires that the undertaking « should develop its own processes for the ORSA, tailored to fit into its organisational structure and risk management system ». We agree</p>	

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	<p>that the ORSA should reflect the nature of the undertaking and the risks it faces but a proportionate response to article 45 might be to use an « off the peg » product suitably « tailored » to improve the fit. We therefore suggest that the proposed wording requiring development of processes might be disproportionate .</p> <p>For these reasons we consider this guideline needs amending.</p> <p>We agree that a guideline would be helpful for regulators and insurers on what is a proportionate response to the requirement to conduct an ORSA. It might be helpful to express such guidance in terms of the quantum of the undertaking's risk appetite. For example, if the undertaking's risk appetite is limited then work required to conduct the ORSA should also be limited.</p> <p>As a small point, is there any reason why the wording in article 45(2) of the Directive « the nature, scale, and complexity of the risks inherent in its business » is changed in the proposed guideline to « the nature, scale, and complexity of the risks inherent to the business »? In our experience of standard setting, we have found that consistency is important. We therefore suggest that, where possible, wording should be the same between the Directive, any relevant Level 2 Implementing Measures and Level 3 Guidelines in order to avoid confusion.</p>	
3.16.	<p>We suggest a more direct wording might be used. For example ; « The administrative, management or supervisory body should take an active part in the ORSA process including steering how the assessment is to be performed and challenging its results. »</p> <p>This is consistent with other responsibilities of the administrative, management or supervisory body for example its responsibilities concerning an internal model in articles 116 and 120 of the Directive.</p> <p>We suggest that the word « including » is used as it does not limit the work that the administrative, management or supervisory body may choose to perform concerning the ORSA.</p> <p>Article 40 of the Directive places a responsibility on the administrative, management or</p>	

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	<p>supervisory body to ensure compliance with « the laws, regulations and administrative provisions adopted pursuant to [the Directive] ». As worded, the proposed guideline requires the administrative, management or supervisory body to ensure its own actions comply.</p>	
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3.18.	<p>From our experience of standard setting, we suggest that the cross reference to the guidelines established under « General Governance – Written policies » should explicitly refer to the relevant paragraph(s) once they are known to avoid any ambiguity.</p>	
	<p>We suggest that this guideline as currently written might be deleted as Guideline 3 already requires that the undertaking should have in place documentation concerning a « record of each ORSA process » (paragraph 3.17 (b)).</p> <p>More generally, we are concerned that these guidelines do not make clear what the ORSA is.</p> <p>Guideline 1 implies the ORSA is a number of processes. This is supported by Guideline 11 which says that the ORSA includes procedures that enable enable the undertaking to monitor its compliance with regulatory capital requirements on a continuous basis. However, Guidelines 5 and 6 imply the ORSA is a single process with a single outcome.</p>	
3.19.	<p>We suggest that it might be helpful if this lack of clarity is resolved.</p>	
	<p>We support the intention that the administrative, management or supervisory body should take an active role in the ORSA process. Similarly it is important that other relevant staff have information which enables them to fulfil their roles concerning the risk management of the business effectively.</p> <p>High quality reporting of the results of the ORSA will be important in facilitating this active engagement. The standard we have developed for reporting of actuarial work includes principles supporting the objective that reports contain sufficient information for users to judge the</p>	
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	relevance, and understand the implications, of their contents. All to be presented in a clear and comprehensible manner. We suggest that EIOPA consider extending this guideline to ensure the quality of reporting.	
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3.38.	We suggest that for the avoidance of doubt this guideline should refer to the « ORSA supervisory report » as defined in guideline 3 to avoid confusion with the internal report on the ORSA.	
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4.14.	The level of detail required of the documentation is described as sufficient that it enables “a third party to evaluate the assessments”. We suggest that the competence of the third party should be defined. We presume that the primary audience is likely to be the administrative, management or supervisory body and regulators and therefore a high level of competence might be assumed.	
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4.17.	Guideline 7 only applies where the undertaking uses recognition and valuation bases different from the Solvency II basis in its assessment of its overall solvency needs. We assume this refers to the recognition and valuation of assets and liabilities.	

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	The explanatory text in paragraphs 4.17 to 4.26, while useful, does not appear to relate to Guideline 7.	
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4.74.	We do not understand this paragraph. The SCR will typically be calculated at the end of an undertaking's financial year although we note that a material change in the risk profile triggers a recalculation. Does this paragraph require that, when an undertaking decides that it will perform its regular ORSA more frequently than annually, it must also recalculate its SCR? Given the work required to perform an SCR this might discourage undertakings performing a regular ORSA more frequently than annually.	
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4.90.	There is typographical error in the cross reference which we consider should refer to “4.14” rather than “3.14”.	
4.91.		
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4.93.	This explanatory text while relevant to a forward looking perspective does not appear relevant to guideline 20 itself which is very limited	
4.94.	This explanatory text does not appear relevant to guideline 20. We consider that stress and scenario testing is considered as part of the assessment of overall solvency needs. It might be better supporting Guideline 18 which considers group specific risks.	
4.95.		
4.96.	We suggest that for the avoidance of doubt this explanatory text should refer to the « ORSA supervisory report » as defined in guideline 3 to avoid confusion with the internal report on the ORSA. (see related comment on paragraph 3.38)	
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4.99.	The final sentence of paragraph b) repeats the preceding sentence.	
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Q1.	We support the EU's commitment towards a single market in insurance services of which the Solvency II Directive forms a key part and the consequent desire to achieve maximum harmonisation of regulatory standards. However, there is a risk that this desire for harmonisation can lead to excessive regulation and we see some signs of this in these guidelines. We would encourage EIOPA to question the need for each one of the proposed guidelines on ORSA and provide a rationale for why each guideline is considered necessary.	
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Q4.		
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Q6.	The document does not provide any analysis of costs other than to recognise in paragraph 5.47 that they may have an economic impact.	
Q7.		
Q8.	<p>It might be more proportionate for small undertakings not to prescribe that the ORSA be performed at least annually. The Directive requires all insurance undertakings to calculate an SCR at least annually (article 102) but the ORSA is only required to be performed regularly (article 45). ORSA Guideline 15 imposes the annual requirement.</p> <p>It might be more proportionate for small undertakings to allow for the regular ORSA to be completed less frequently, perhaps every three years, supplemented with an annual qualitative update.</p>	
Q9.	We suggest that compliance with the guidelines is best reported to an undertaking's national and/or group supervisor through a statement in the ORSA supervisory report with reasons for any non-compliance.	