

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
Name of Company:	CRO Forum and CFO Forum	
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 <u>change the numbering</u> 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, <u>in Word Format</u>, to CP-13-008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the paragraphs refers to this Consultation Paper, the numbering of cells refers to the Technical Annexes II and III.</p>		
Reference	Comment	Resolution
General Comment	<p>Joint CFO Forum and CRO Forum feedback on Interim measures</p> <p>We reiterate our support for the efforts made by EIOPA in seeking to achieve harmonised progress towards the implementation of Solvency 2 in the European Union and welcome the opportunity to comment on these consultations.</p>	

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We look forward to engaging with you and your team constructively as EIOPA finalises the guidelines for the interim period.

Some key considerations in respect of the system of Governance as set out below:

1. **The guidelines on the roles and responsibilities of the Functions are described at inconsistent levels of detail and in many cases we perceive them to be overly prescriptive.**

As previously stated in our example on the level of prescription, we feel the detail with which the roles and responsibilities of the different functions are described is inconsistent and not principles based. In many cases we believe the guidelines are overly detailed favouring a specific organizational solution, for example with the actuarial function. We believe that to comply with the responsibilities set out for such functions, firms should be allowed to organize themselves as they best see fit, with the goal of avoiding duplication/overlap of responsibilities, while maintaining the fundamental principles of checks and balances the regulators want to see implemented, and the independence of control responsibilities and tasks.

We would welcome industry consultation on how the functions should interact in such a way as to avoid overlap in responsibilities.

2. **The guidelines on the prudent person principle are impractical, subjective and do not apply a proportionate approach to Efficient Portfolio Management (EPM).**

Having to introduce additional constraints on top of existing regulations for managing investments will be challenging where the regimes (Solvency 1 and Solvency 2) could lead to different decisions in some cases. During the interim period, we would prefer that the requirements apply to firms only on ad-hoc basis requiring firms to review their portfolio on a regular basis and assess the impact of Solvency 2 on their composition and on the level of

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	<p>associated risk.</p> <p>3. The guidelines on outsourcing are impractical and not proportionate. The guidelines indicate that fit and proper checks will need to be carried out on all persons working on an outsourced function. This is impractical and the effort required to train all staff would potentially outweigh the benefits. We would suggest applying proportionality here to assess who needs to be Fit and Proper (e.g. people effectively running the service provider) and then rely on ensuring the required contractual obligations are implemented. This would ensure the supplier was held accountable for delivery of the services to the required level.</p> <p>Also, the guidelines set out that ‘insurance intermediaries’ would fall in scope of outsourcing requirements. This should be explicitly limited to activities not covered by the Insurance Mediation Directive to avoid overlapping of two supervisory frameworks.</p> <p>We would like to emphasise that any governance request related to the technical provisions should allow for a sufficient time period after the rules in respect of valuation have been published. This is to allow companies to implement the rules appropriately.</p>	
Introduction General Comment		
1.1		
1.2	The scope of this requirement is too big; it includes also the prudent person principle and governance of own funds. We would suggest that Articles 93 and 132not apply until SII is in force.	
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1.8	Having to introduce additional constraints on top of the existing regime for managing investments seems unpractical, especially because both regime (Solvency II and Solvency I) can lead to different decisions in some cases. We would prefer that the requirements applies to firm only on ad-hoc basis requiring firm to review their portfolio on a regular basis and assess the impact of Solvency II on their composition and on the level of associated risk.	
1.9	As stated in the introduction, there is no framework for the valuation of technical provisions in the interim period and the task of the actuarial function is only relevant for the submission of interim information to the supervisory authority. So we could have expected to have less requirements regarding data quality, testing against experience and even reporting to the AMSB. We are concerned that guidelines in chapter VIII would raise significant expectation from NCAs. Should the requirements for the actuarial function be only related to the submission of information, then the requirements should be reduced to avoid additional overheads for companies. This is particularly important to ensure that entities are not double regulated.	
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Section I. General Comments		
1.13	As noted in the general remarks section, the guidelines raise the key concern that the current drafting does not recognise this interim period as a preparatory phase. Furthermore, should we consider the period between 1/01/2014 to 1/01/2016 as a period to	

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	become progressively compliant to these measures or should we be already compliant the 01/01/2014?	
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Section II. General Comments		
Chapter I General Comments		
1.16	In applying this requirement, the regulator should be mindful that the challenge can happen outside committees (ASMB) through regular interactions between members of the committees and the undertaking senior management. Requiring the challenge to happen within committees could reduce the effectiveness of these regular interactions. Therefore, we would suggest changing “challenge” to “review” and eventually add a statement to “ensure that the information was adequately challenged before or during the committee”.	
1.17	In applying this requirement, the regulator should be mindful that the challenge can happen outside committees (ASMB) through regular interactions between members of the committees and the undertaking senior management. Requiring the challenge to happen within committees could reduce the effectiveness of these regular interactions. Therefore, we would suggest to change “challenge” by “review” and eventually add a statement to “ensure that the information was adequately challenged before or during the committee”.	
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1.24	Guideline 7 states that “national competent authorities should ensure that the undertaking appropriately documents the decisions taken at the level of the administrative, management or supervisory body of the undertaking and how information from the risk management system has been taken into account”. We consider that this should apply to “material” decisions only, consistent with the principles of proportionality.	
1.25		
1.26		
1.27	Proportionality also needs to apply with regard to the level of completeness required for documentation.	
1.28	As explained in the introduction, this requirement and the next one are too prescriptive and don ‘t necessary make the difference between what is a policy (eg a principle based document like the Solvency II directive) and a procedure (eg technical document like level 3 text).	
1.29	The explanation regarding the review of written policies might be too detailed, it would be sufficient to confirm that the review has to be appropriately documented. The implementation should be left to the undertaking. In practice it would be very time consuming to record all the suggested recommendations made during the review process.	
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Chapter II General Comments		
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1.34	1.34c: The requirements regarding «Fit & Proper» should not be relevant for so called «other relevant personnel ». This could lead to extensive discussions. The requirements for «key personell» should be enough.	
1.35	<p>This guideline is not consistent with the overriding principal of proportionality in the Directive. Moreover, it goes beyond the scope of directive. It is very onerous to have to apply fit and proper requirements to all persons employed by a service provider. We suggest that this requirement is only practical when applied for the persons <u>responsible</u> for carrying out the key function to meet 'fit and proper' requirements.</p> <p>We agree that this quality assessment is important, but question the requirement of a 'designated' person, i.e. the task being performed on a regularly basis should be sufficient.</p> <p>The current guidelines make no mention of a derogation in respect of group entities or a derogation where checks have already been carried out under other EEA countries' fitness and probity regimes. We would like to see these points included for the final version of the Guidelines.</p> <p>Note: Article 42 referred to fit and proper requirements for holders of key functions (did not include all their staff).</p>	
1.36	<p>(Not included at Level 3? Appears to be a new requirement)</p> <p>The extension is that it requires to designate a person, a committee would not be sufficient anymore. We deem this is excessive and suggest to change the text to "...ensure that the</p>	

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	undertaking designates a person or committee within the undertaking.....“ .	
Chapter III General Comments		
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1.38	.	
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1.40	For the risk management policy, see our general comments regarding policies and explanatory text. This is too prescriptive and the explanatory text seems to add additional requirements rather than be illustrative.	
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1.42	For the risk management policies, see our general comments regarding policies.	
1.43	For the risk management policies, see our general comments regarding policies.	
1.44	For the risk management policies, see our general comments regarding policies. c) Risk types such as reputation risk, <u>operational risk</u> and strategic risk are inherently difficult to quantify and hence are not necessarily controlled separately with quantitative limits or trigger values. These risks are, however, implicitly managed by a strict application of the risk strategy and further addressed by other risk policies (such as the group-wide New Product Introduction Policies for financial instruments and insurance products), processes (such as the business planning process) and functions (such as the Compliance function) and controls (Internal Control System = ICS).	

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1.45	For the risk management policies, see our general comments regarding policies.	
1.46	The word „stress“ should be deleted as it confuses risk scenarios with stress tests. This should read: “In accordance with Article 44 of Solvency II, national competent authorities should ensure that for the purposes of operational risk management, the undertaking develops and analyses an appropriate set of operational risk scenarios based on at least the following approaches:..” Moreover, for the risk management policies, see our general comments regarding policies.	
1.47	For the risk management policies, see our general comments regarding policies.	
1.48	<i>“Where applicable, procedures for ensuring that unit-linked policyholders continue to receive benefits in line with aims and objectives originally communicated to them”</i> – further clarification is sought as to the exact intention behind this requirement. We believe it is further covered by the terms of the contracts and the design of the product. Moreover, for the risk management policies, see our general comments regarding policies.	
1.49	There is duplication in c) and d). Suggest that reference to stress tests is deleted in c) and this therefore only requires ‘ a description of deliberate mismatches permitted’. Moreover, for the risk management policies, see our general comments regarding policies.	
1.50	We suggest to: <ul style="list-style-type: none"> • Remove the requirement (c) for the policy to cover ‘consideration of the financial market environment’ as this is too vague. • Remove ‘highly’ from (e), so this says ‘the link between market risk and other risks in adverse scenarios’. Also, (g) is not clear – need to clarify whether the “performance” to be monitored refers to how well the policy has performed or whether it refers to how well the assets giving rise to the investment risk have performed.	

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	<p>Likewise in (g), it is not clear whether the requirement to “review the policy” requires reviewing the entire policy document or is intended to refer to reviewing the level of security, quality, liquidity, profitability and availability that the undertaking is aiming for.</p> <p>”</p> <p>(h) is too subjective - “best interest” should be replaced with the “interest” since it is not always possible to prove why selecting a high yielding asset with higher risk or a low yielding asset with low risk is in the “best” interests of the policyholder although it should be possible to prove that it is in the interest of the policyholder. This provision could be dropped as it is already properly covered by Art. 132 of the Directive, under the ‘Prudent Person Principle’.</p> <p>Moreover, for the risk management policies, see our general comments regarding policies.</p>	
1.51	<p>Sub (d) should only apply to financing tools when they are being set up. We suggest to Add wording at the start „when introducing financing tools“</p> <p>We would also add the following points : « consideration of the effect of a worst case scenario on the liquidity buffer » and « definition of a contingency liquidity and funding plan“</p> <p>Moreover, for the risk management policies, see our general comments regarding policies.</p>	
Chapter IV General Comments	<p>Having to introduce additional constraints on top of the existing regime for managing investments seems unpractical, especially because both regimes (Solvency II and Solvency I) can lead to different decisions in some cases. We would prefer that the requirements applies to firm only on ad-hoc basis requiring firm to review their portfolio on a regular basis and assess the impact of Solvency II on their composition and on the level of associated risk.</p>	
1.52	<p>We would like to suggest the following wording:</p> <p><i>„In accordance with Article 132 of Solvency II, national competent authorities should ensure that the undertaking develops its own set of key risk indicators for the purpose of investment risk management. These should be appropriate to its risk management policy and business strategy.“</i></p>	

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1.56	As above in 1.50, we suggest that “best interest” should be replaced with the “interest” since it is not always possible to prove investments are in the “best” interests of the policyholder. Furthermore, the investment is decided by the policyholder in many cases.	
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1.60	<p>We feel that the prescribed guidelines contain unnecessary detail. It also does not take into account the latest regulatory development in the field of derivatives, which will among other introduce a clearing for OTC transactions, and therefore significantly reduce the risks with the quality, security and liquidity of the transactions.</p> <p>Finally, the provisions primarily make sense in the context of Pillar 1, and specifically the calculation of capital requirements net of risk mitigation instruments. We would recommend simplifying the provisions out of the pre-implementation package, and keep only the latter element <i>‘In accordance with Articles 44 and 132 of Solvency II, national competent authorities should ensure that the undertaking documents the rationale and demonstrates the effective risk transfer obtained by the use of the derivatives where derivatives are used to contribute to a reduction of risks or as a risk mitigation technique’</i> for the end-of-state guidelines.</p>	
1.61	See 1.60 and the “whole portfolio is improved” requirement is not proportionate. Therefore we suggest that this guideline is removed	

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1.62	See remark 1.60. We suggest to remove this guideline	
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Chapter V General Comments	The level of detail with which the roles and responsibilities of each of the key functions are described is excessive. We feel strongly that each undertaking should be given the liberty to choose how to organize its internal functions with the caveat of preserving independence of control tasks from operations.	
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Chapter VI General Comments		
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Chapter VII General Comments		
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1.71	We suggest to eliminate paragraph 1.71.b) which seems to implicitly establish a reporting line between the person responsible for the internal audit function and the supervisory authority. Under the current legal framework it is the AMSB's obligation to report to the supervisory authority and the	

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	<p>Solvency II Directive does not provide for similar direct reporting requirements for any of the four control functions. The Guidelines should not introduce such requirements either, because this could negatively affect the System of Governance. At least the reason for such reports would have to be clearly specified, and the same applies to the conditions which would need to be fulfilled to justify such additional requirements. Supervisory authorities regularly receive the internal audit reports to the AMSB and can, of course, discuss any issues directly with the internal audit function in the course of supervisory reviews.</p> <p>We further suggest to eliminate paragraph 1.71.c) which seems to require a kind of regular rotation of internal audit staff to ensure independence and objectivity of the internal audit function. The size of the internal audit function normally would not allow for a regular rotation. In addition, the need to build special skills and knowledge to cope with the complexity of processes and systems to be audited does not encourage rotation but instead specialization?.</p> <p>Conflicts of interest that may exist in some cases (e.g. due to personal relationships) must be solved individually (e.g. by additional managerial oversight or by hiring outside auditors if other alternatives are not available).</p>	
1.72		
1.73	<p>Part (d) requires a “report on its findings and recommendations to the AMSB” suggesting all findings need to be reported to the AMSB rather than just significant risk/control issues. An element of judgement would enable greater focus on the key issues, which reflects best practice.</p> <p>Part (e) similarly suggests follow up on all findings. A risk based approach should be performed across all control remediation actions not just those raised by Internal Audit. i.e. a sample approach focussed on material control issues is reflected in best practice.</p> <p>We propose the following edit to Guideline 37:</p> <p>d) “issues recommendations based on the result of to the findings of the audit work carried out in accordance with point (a) and submits a written report to the administrative, management or supervisory body on at least an annual basis”</p> <p>verifies compliance with the decisions taken by the administrative, management or supervisory body</p>	

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	on the basis of those recommendations (where issued referred to in point (d).	
1.74		
1.75	We propose the following edit to Guideline 38: “In accordance with Article 47 of Solvency II, national competent authorities should ensure that the recommendations (where issued) of the internal audit function of the undertaking include the envisaged period of time to remedy the shortcomings and the persons responsible for doing so.”	
1.76	We propose the following edit: “In accordance with Article 47 of Solvency II, national competent authorities should ensure that the internal audit function of the undertaking issues at least annually an internal audit report to the administrative, management or supervisory body. This report should include information on the extent to which the internal audit function’s objectives, the execution of the audit plan and the follow-up of audit-recommendations (where issued) and implementation of management remediation actions have been achieved.”	
Chapter VIII General Comments	<p>Should the requirements for the actuarial function be only related to the submission of information, then the requirements should be reduced to avoid additional overheads for companies. This is particularly important to ensure that entities are not double regulated.</p> <p>Should the original text be maintained, we feel that the tasks and responsibilities of the Actuarial Function, as well as the organisational solution that seems to transpire from the Guidelines and the explanatory text raise the following serious concerns</p> <p style="margin-left: 40px;">I) The level of detail with which the roles and responsibilities of each of the key functions are described is excessive: we feel strongly that each undertaking should be given the liberty to choose how to organize its internal functions with the caveat of preserving independence of control tasks from operations (see same comment Chapter 5).</p> <p>Whilst we agree with the necessity that internal audit has to be objective and independent from the operational function, we do not think this is also a necessity for the other key functions, mainly risk management, actuarial and compliance. These 3 functions are part of the so-called 2nd line of defense and therefore we see no conflict</p>	

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	<p>of interests, as long as they are strictly separated from the first line of defense where risk-taking occurs. Whichever way these functions are organized should be left up to the Company to decide.</p> <p>II) Without prejudice to our comment above, many of the tasks allotted to the Actuarial Function are in fact control tasks and open the door to potential overlap with the Risk Management function's roles and responsibilities</p> <p>This is true for the Guidelines themselves but it is especially evident when assessing the Explanatory Text.</p> <p>We therefore think that the interim guidelines should be phrased in a way that the organizational structure within the 2nd line of defense is kept flexible. It should be possible to allow undertakings, especially with regards to those tasks that concern valuations and expert opinion, to organize themselves as they feel best fits their internal structures.</p>	
1.77	<p>The scope of the actuarial function is overly prescriptive. The explanatory text to Guideline 40, 1.162 lists "The group actuarial function provides advice and an actuarial opinion on: underwriting risks of the group, asset-liability aspects, the group's solvency position, the groups prospective solvency position, ...distribution of dividends in relation to discretionary benefits, underwriting policies, reinsurance arrangements, etc...". This is potentially beyond the scope of responsibilities, which are already clearly established and proven to be effective and efficient within a company or a group. Rather, undertakings should be required to be able to demonstrate which function carries which responsibility.</p> <p>We agree that there could be potential conflicts of interests in case tasks of the first line of defense, e.g. pricing or risk trading activities, are added. It is however unclear what potential conflicts of interests could be in case additional tasks or activities from other key functions of solvency II are added. This should therefore deleted.</p>	

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1.79	<p>We support not to enforce Solvency II Pillar I calculations at this stage</p> <p>See our general remarks on explanatory text – this should be seen as illustrative and not as additional requirements. In particular, it is not clear what the intention of ET 1.164 is in relation to the guideline. and we suggest to delete it.</p> <p>Notwithstanding the above point, ET1.164 requires “the actuarial function uses methodologies that allow for complete analysis regarding those requirements [appropriateness of methodology and data assessments]”. Suggest “complete” is replaced as unreasonable to attain in practice and caveated e.g. “..the actuarial function uses methodologies that allow for detailed/comprehensive/robust analysis regarding those requirements, where this is proportionate to the nature, scale and complexity of the risks inherent in the calculation of the TPs”.</p>	
1.80	We support not to enforce Solvency II Pillar I calculations at this stage	
1.81	<p>We support not to enforce Solvency II Pillar I calculations at this stage</p> <p>In some cases, instability is a feature of the underlying product that is valued and not of the valuation model itself. This may for example be true for the valuation of options and guarantees in participating life insurance contracts. Therefore the guideline should generally be rephrased in a way that <u>no undue instability</u> in valuation models should be introduced.</p>	
1.82	ET 1.169 requires “sufficient data to enable the implementation of the methodologies and any statistical analysis”. While this is ideal in theory, from a practical point of view this will not always be attainable. As noted in our general remarks, the explanatory text should be seen as illustrative and not as additional requirements.	

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1.83		
1.84	<p>We support not to enforce Solvency II Pillar I calculations at this stage</p> <p>In practice, the Profit & Loss Attribution will be one of the key sources of information or analysis.</p> <p>ET 1.172 states that “proposals to change assumptions and to modify valuation models in order to improve best estimates have to be evidence-based”. This statement should be seen as illustrative (as noted in the general remarks in respect of all explanatory text) and could be relaxed to permit consideration of other, more subjective “evidence” e.g. emerging actuarial leading-practice, expert judgment and research. Suggest “proposals to change assumptions and to modify valuation models in order to improve best estimates have to be justified, for example with reference to evidence-based analyses. Unsupported or arbitrary changes in modelling should not be permitted</p>	
1.85	<p>The explanatory text for Guideline 45 appears to infer the requirement will be for the actuarial team to do work independently from the underwriting or reinsurance teams. The subject of the reinsurance and underwriting opinions and the actuarial function is an area where there currently appears little consensus, whether from actuarial professions, industry or regulatory bodies on what is required. As with all explanatory text, this should be seen as illustrative rather than a requirement. In addition it should be up to firms to organize themselves as they best see fit, with the goal of avoiding duplication/overlap of responsibilities.</p>	
1.86	<p>Guideline 46 refers to the actuarial function contributing to the assessment of risk and specifically “...the risk relating to the terms on which business is written and how dependencies between risks are derived.” This appears to extend well beyond what the actuarial function’s remit would be expected to be. For example, dependencies are not mentioned in the level 1 or draft level 2 text in this context at all. It would be more appropriate for the underwriting teams to consider the “terms on which business is written”. We propose that this guideline is deleted.</p>	
1.87	<p><i>Annual internal report to the administrative, management or supervisory body- “In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking produces a written report to be submitted to the administrative, management or</i></p>	

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	<p><i>supervisory body, at least annually. The report should document all tasks that have been undertaken by the actuarial functions and their results, and clearly identifies any deficiencies and gives recommendations as to how such deficiencies could be remedied”.</i></p> <p>Requirement to prepare a single consolidated report for submission to the AMSB is potentially very onerous and may not in all case be fit for purpose; the option to provide a series of sub-reports over the year in documented format is most appropriate, rather than a single report should be permitted, and for purposes of external submission to supervisor, simply composed of a consolidated set of these sub-reports presented to the internal administration bodies. The producers of these reports should not need to be the same person/function e.g. sub-reports could be submitted by actuarial, underwriting, reinsurance functions depending on particular item(s) being addressed.</p> <p>It is important that proportionality can be exercised also in the report of the actuarial function to avoid additional reporting of topics already reported via other reports, e.g. RSR, ORSA,</p>	
Chapter IX General Comments	Generally, guidelines are clearly described and understood. Further clarification on scope might be useful, i.e. applicability only for new contracts or all existing? In some points we consider the requirements as overly burdensome, e.g. the requirement of business contingency plans including exit strategies.	
1.88	The definition of critical or important operational function is workable (positive)	
1.89	As noted in the general remarks, we would welcome the introduction of a reference to the IMD (Insurance Intermediaries Directive) in the guideline. So we suggest adding: “.....intermediary is subject to the outsourcing requirements for activities not subject to IMD ”	
1.90	The definition of key function being outsourced intra-group, i.e. allowance for Group to determine (and document) governance setup of key functions is sensible (positive).	

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1.91	<p>The explanatory text for this guideline indicates that any sub-outsourcing of critical or important functions needs to be approved by the undertaking. In practice this requirement will be onerous to apply for existing outsourcing arrangements. As noted in the general remarks, the explanatory text should be seen as illustrative rather than additional requirements. More practical guidance would be that regardless of any sub-outsourcing of activities/functions, the undertaking remains fully responsible for the activity/function performed.</p> <p>Furthermore, it is unclear whether outsourcing requirements would be applied to existing contracts</p>	
Section III. General Comments		
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Compliance and Reporting Rules General Comments		
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