

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

Name of Company:	Deloitte Touche Tohmatsu	
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"> <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:CP-13-008@eiopa.europa.eu">CP-13-008@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 this Consultation Paper, the numbering of cells refers to the Technical Annexes II and III.</p>		
<b>Reference</b>	<b>Comment</b>	<b>Resolution</b>
<b>General Comment</b>	<p>We welcome the preparatory guidelines as ensuring convergence of practices across Europe ahead of Solvency II's implementation is critical.</p> <p>To improve the contribution of these guidelines to Solvency II preparedness, we believe that they should be cross-referenced with the envisioned Level 2 and Level 3 measures. This would ensure that the preparatory guidelines are actually seen as a "stepping stone" to the full Solvency II requirements and not a separate set of rules, requiring additional work from undertakings already</p>	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
	dealing with much change. We feel that if these preparatory guidelines were an additional burden, not a stepping stone to full Solvency II reporting, this would not serve the purpose which EIOPA aim for but, rather, would distract undertakings from their core implementation activities and have a detrimental effect on their work towards compliance.	
<b>Introduction General Comment</b>		
1.1		
1.2		
1.3		
1.4		
1.5		
1.6		
1.7	<p>We believe yearly reports by February may not be frequent enough if the goal is a “checkpoint” to assess progress on the application of the guidelines. This is in particular true if Solvency II is implemented in 2016 (only one “checkpoint” in 2015 will be considered) or 2017 (only two “checkpoints”). We suggest EIOPA request a summary report by July of each year, in order to better assess the progress of harmonization and discuss any issue with NCAs (such as varying pace of implementation, divergence in the application of the guidelines, etc.).</p> <p>We also suggest that EIOPA gives a high-level content for the progress report. A simple option being the organization of the report along each guideline.</p>	
1.8		

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
1.9		
1.10		
1.11		
1.12		
<b>Section I. General Comments</b>		
1.13		
1.14		
1.15		
<b>Section II. General Comments</b>		
<b>Chapter I General Comments</b>		
1.16		
1.17	<p>This paragraph suggests a division of roles and responsibilities between local and group AMSBs. It is not clear from this paragraph what the expected division of roles and responsibilities should be which could lead to differences in the application by national competent authorities. We request clarification of the minimum roles and responsibilities of the Group AMSB to enable consistent application of the group supervisory requirements in the interim period.</p> <p>Additionally, we propose rewording the paragraph to the following: "In accordance</p>	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
	with Article 246 of Solvency II, national competent authorities should ensure that at group level, the administrative, management or supervisory body of the entity responsible for fulfilling the group governance requirements has regular interaction with the administrative, management or supervisory bodies of all entities within the group. The group administrative, management and supervisory body should request relevant information proactively in matters that may affect the group and challenge strategic decisions made entity level."	
1.18	<p>This paragraph differs from our understanding of Article 41 and introduces additional alignments that make the requirements more complicated. We suggest reverting to the Level 1 suggestion of clear and transparent organisational structures and move away from requiring assessment of support of the strategic objectives and operations.</p> <p>We propose aligning the interim guidelines to the requirements of the Directive. We propose the following rewording of the paragraph: "In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking has a clear and transparent organisational structure with an appropriate allocation and segregation of responsibilities. These structures should be reviewed and adapted when there is a significant change to internal and/or external environment."</p>	
1.19	<p>This paragraph suggests that there are regular evaluations of the group structure against the soundness of the group. However, soundness has not been defined. Is this a quantitative or qualitative measure? We request clarification on the definition of soundness to ensure consistent application by national competent authorities.</p> <p>We also propose rewording the paragraph to the following: "In accordance with Article 246 of Solvency II, national competent authorities should ensure that the administrative, management or supervisory body of the entity responsible for fulfilling the governance requirements at group level have responsibility for evaluating the group's structure to identify any significant risks to group or entity soundness and for making the necessary adjustments in a timely manner."</p>	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
1.20		
1.21	This paragraph suggests that the compliance function should be appropriately implemented during the interim period; however there is no further information on what this means set out in this CP. We propose the addition of guidelines setting out the expectations for the compliance function in the interim period.	
1.22	<p>This paragraph suggests that there is flexibility in how the required functions are implemented at group level. If there are minimum requirements and rules for delegation, we suggest that these are made clear in this paragraph to ensure common implementation across all jurisdictions.</p> <p>Additionally, this paragraph suggests that the compliance function should be appropriately implemented during the interim period; however there is no further information on what this means set out later in the paper. We propose the addition of guidelines setting out the expectations for the compliance function in the interim period.</p>	
1.23		
1.24	<p>This paragraph is open to interpretation. In the spirit of minimising inconsistencies in the application of the interim guidelines across jurisdictions we would like to request addition of relevance and materiality as criteria.</p> <p>We propose rewording this paragraph to the following: "In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking appropriately documents material decisions taken at the level of the administrative, management or supervisory body and its committees demonstrating that relevant information from the risk management system has been considered."</p>	
1.25		

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
1.26		
1.27		
1.28	This paragraph does not include the scope of policies which this applies to. We request that the scope is made clear.	
1.29	<p>This paragraph suggests that the roles and responsibilities of the key functions are dispersed across all of the policies. Our experience is that this is helpful to have within the policies, but does not provide clarity on the overall roles and responsibilities of the function. Our experience suggests that this can be documented in different ways outside of the policies and be equally effective.</p> <p>We propose rewording the paragraph as follows: "In accordance with Article 41 of Solvency II, national competent authorities should ensure that the roles, responsibilities, rights and powers of the key functions are clearly documented."</p>	
1.30		
<b>Chapter II General Comments</b>		
1.31		
1.32		
1.33	The term financial soundness is vague and we request further definition and examples of what a firm would need to do to satisfy these requirements in order to ensure a consistent implementation with the Union.	
1.34		

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

1.35	<p>The current wording of the paragraph suggests that for the interim period, the undertaking is responsible for carrying out a fit a proper assessment of its service providers. Given that the Solvency II requirements do not apply at this point in time, it seems unreasonable that undertakings are required to apply these requirements. We suggest that undertakings are responsible for taking appropriate steps to ensure that the service provider will meet these requirements on the relevant timescales. Additionally, the current wording indicates that the outsourcing requirements will only be applied to the key functions that are defined as the risk management function, compliance function, internal audit function and actuarial function (critical and important functions are not mentioned). If this is the case, can these functions be specifically identified to facilitate consistent application across all jurisdictions.</p> <p>Thus, we propose rewording the paragraph as follows: "In accordance with Article 42 and 49 of Solvency II, national competent authorities should ensure that the undertaking has taken appropriate steps to ensure that the service provider or sub service provider materially meets the fit and proper requirements when performing risk management, actuarial, internal audit and/or compliance functions."</p>	
1.36		
<b>Chapter III General Comments</b>		
1.37	<p>The Level 1 text and draft Level 2 text do not contain reference to risk appetites. We propose replacing risk appetite with "risk strategy" for consistent application across all jurisdictions in line with the Article 44 of the Directive.</p>	
1.38	<p>The Level 1 text Article 246 refers to the risk management system set out in Article 44 which includes putting in places the systems necessary to identify, measure, monitor, manage and report the risks to which the business is exposed. We propose rewording sub-paragraph c. to the following: "the identification, measurement, management, monitoring and reporting of risks at group level."</p>	

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

	Additionally, the Level 1 text and draft Level 2 text do not contain reference to risk appetites. We propose replacing risk appetite with "risk strategy" for consistent application across all jurisdictions in line with the Article 44 of the Directive.	
1.39		
1.40	<p>This requirement is restrictive in how an undertaking is expected to embed risk management. It excludes other forms of organisational documentation that may be more appropriate for meeting this requirement, such as risk standards, manuals, protocols, business processes, etc . We would like to propose replacing risk management policy with following wording: "formal risk management documentation".</p> <p>Additionally, the Level 1 text and draft Level 2 text do not contain reference to risk appetites. We propose replacing risk appetite with "risk strategy" for consistent application across all jurisdictions in line with the Article 44 of the Directive.</p>	
1.41		
1.42		
1.43	This paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. Additionally, experience indicates that concentration of internal underwriting limits, management of investments across new business and existing business and alignment to reserving risk should be included. We propose that risk management policy is replaced with "formal risk management documentation".	
1.44	This paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk management policy is replaced with "formal risk management documentation".	



<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
1.45		
1.46		
1.47		
1.48		
1.49	<p>The term deliberate in sub-paragraph c. is unclear. We propose replacing deliberate with "known".</p> <p>Additionally, this paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk management policy is replaced with "formal risk management documentation".</p>	
1.50	<p>The characteristics of security, quality, liquidity, profitability and availability in paragraph a. and b. are open to interpretation. We propose qualifying these with "criteria such as".</p> <p>Additionally, this paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk management policy is replaced with "formal risk management documentation".</p>	
1.51	<p>In order to be consistent with the requirements of 1.56 and 1.57, we propose the addition of point f.: "consideration for the identification and management of the liquidity constraints on unit-linked contracts."</p> <p>Additionally, this paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk management policy is replaced</p>	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
	with "formal risk management documentation".	
<b>Chapter IV General Comments</b>		
1.52		
1.53		
1.54	The scope of non-routine investment activities is not clear. Is non-routine relative to the entire market on average or relative to the undertaking? We request a definition of non-routine investment activities.	
1.55	Is the scope of this requirement solely for non-routine investment activities? If so, please refer to comment for paragraph 1.54.	
1.56		
1.57		
1.58		
1.59		
1.60		
1.61		
1.62		
1.63		

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
<b>Chapter V General Comments</b>		
1.64	We have found no clear basis under the Directive Articles 41 and 93 for a capital management policy. Additionally, the current wording of the guideline does not include consideration of the fiduciary duties to shareholders in relation to the referred to capital instruments. It should be at the discretion of undertakings to establish such a policy where relevant. This requirement should not be applied until its basis has been established under Solvency II. We propose deletion of this requirement.	
1.65	We have found no clear basis under the Directive Articles 41 and 93 for a medium term capital management plan. It should be at the discretion of undertakings to establish such a plan where relevant. This requirement should not be applied until its basis has been established under Solvency II. We propose deletion of this requirement.	
1.66	We have found no clear basis under the Directive Articles 41 and 93 for a medium term capital management plan. It should be at the discretion of undertakings to establish such a plan where relevant. This requirement should not be applied until its basis has been established under Solvency II. We propose deletion of this requirement.	
<b>Chapter VI General Comments</b>		
1.67	<p>We suggest, in line with our comments on paragraphs 1.21 and 1.22, that the compliance function is specifically identified to carry out these roles and responsibilities.</p> <p>We propose rewording the paragraph as follows: "In accordance with Article 46 of Solvency II, national competent authorities should ensure that the compliance function promotes the importance of performing appropriate internal controls by ensuring that all personnel are aware of their role in the internal control system. The control activities should be commensurate to the risks arising from the activities and processes to be controlled."</p>	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
1.68		
1.69		
<b>Chapter VII General Comments</b>		
1.70		
1.71		
1.72		
1.73		
1.74		
1.75		
1.76		
<b>Chapter VIII General Comments</b>		
1.77		
1.78	<p>The current wording of this paragraph is confusing. Our understanding of this guideline is at group-level there is an assessment resulting in a group-wide opinion on the reinsurance policy and overall reinsurance programme.</p> <p>We propose rewording the paragraph as follows: "In accordance with Article 48 of Solvency II, the national competent authorities should ensure that the actuarial function provides to the administrative, management and supervisory body of each</p>	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
	legal entity an opinion on the adequacy of reinsurance arrangements in place. Additionally, in accordance with Article 246 of Solvency II, the national competent authorities should ensure that the administrative, management and supervisory body of the entity responsible for fulfilling the governance requirements at group level is provided with an opinion from the actuarial function on the reinsurance policy and the reinsurance program for the group as a whole."	
1.79	<p>This guideline appears to contradict paragraph 1.9 that states "There is no full framework for technical provisions valuation during this period". Without a valuation framework supporting Articles 76 to 85, this guideline is impractical. Thus, we propose that undertakings are expected to take appropriate steps toward meeting these requirements.</p> <p>We propose rewording this paragraph as follows: "In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking are taking appropriate steps to enable meeting the requirements set out in Articles 76 to 85 of Solvency II for the calculation of technical provisions."</p>	
1.80		
1.81		
1.82	<p>This paragraph is vague and we are aware of a number of possible interpretations of the paragraph. For example, is this suggesting that the actuarial function carry out a general comparison of all internal data against external data or comparison of external data against internal data where external data has been chosen to be used?</p> <p>We propose rewording the paragraph as follows: "In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking assesses the sufficiency and quality of the internal and external data used in the calculation of technical provisions. Where relevant, the actuarial function should provide recommendations on internal procedures to improve data quality so as to ensure that the undertaking is a position to comply with the related Solvency II</p>	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
	requirement when implemented.”	
1.83	We have found no clear basis under Article 48 for an analysis of change to be carried out by the actuarial function. It should be at the discretion of undertakings to decide which function will carry out this analysis and report it to an appropriate committee.	
1.84		
1.85	This paragraph is unclear, and we request clarification on the expectations of the actuarial function in relation to consideration of the interrelations between an undertaking’s reinsurance arrangements, its underwriting policy and the technical provisions.	
1.86		
1.87	<p>Is it expected that this will be reported in a single report or as a series of reports throughout the year? Many of these tasks are currently not carried out at the same time.</p> <p>We propose rewording the paragraph as follows: “In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking produces a written report or series of reports to be submitted to the administrative, management or 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.”</p>	
<b>Chapter IX General Comments</b>		
1.88		

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

1.89	<p>This paragraph suggests early adoption of Solvency II, as applying the outsourcing requirements could potentially result in changes to contractual terms. We propose softening this requirement to ensure that undertakings are taking appropriate actions to be prepared for Solvency II.</p> <p>We proposed rewording the paragraph as follows: "In accordance with Article 49 of Solvency II, national competent authorities should ensure that, when an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an insurance undertaking, the undertaking is taking appropriate steps with its intermediary to be prepared for the outsourcing requirements."</p>	
1.90		
1.91	In order to be consistent with paragraph 1.36, we proposed the addition of sub-paragraph d.: "the roles and responsibilities of the individual designated with overall responsibility for the outsourced key functions."	
<b>Section III. General Comments</b>		
1.92		
1.93		
1.94		
1.95		
1.96	In the Level 1 text contagion risk is presented as a subset of concentration risk. We propose rewording sub-paragraph a. to the following: "reputational risk and risks arising from intra-group transactions and risk concentrations, including contagion risk,	

<b>Comments Template on Consultation Paper on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
	at the group level;"	
1.97		
1.98		
1.99	This paragraph does not have a clear requirement for the system of governance. Thus, we propose deletion of this requirement from this set of guidelines.	
<b>Compliance and Reporting Rules General Comments</b>		
1.100		
1.101		
1.102		
1.103		
<b>Impact Assessment – General Comments</b>		
2.1		
2.2		
2.3		
2.4		
2.5		



**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

2.6		
2.7		
2.8		
2.9		
2.10		
2.11		
2.12		
2.13		
2.14		
2.15		
2.16		
2.17		
2.18		
2.19		
2.20		
2.21		

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

2.22		
2.23		
2.24		
2.25		
2.26		
2.27		
2.28		
2.29		
2.30		
2.31		
2.32		
2.33		
2.34		
2.35		
2.36		
2.37		

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

2.38		
2.39		
2.40		
2.41		
2.42		
2.43		
2.44		
2.45		
2.46		
2.47		
2.48		
2.49		
2.50		
2.51		
2.52		
2.53		

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

2.54		
2.55		
2.56		
2.57		
2.58		
2.59		
2.60		
2.61		
2.62		
2.63		
2.64		
2.65		
2.66		
2.67		
2.68		
2.69		

**Comments Template on  
Consultation Paper on the Proposal for Guidelines  
on the System of Governance**

**Deadline  
19 June 2013  
12:00 CET**

2.70