

**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:	<b>Insurance Europe</b>	
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>Insurance Europe recognizes the benefits of undertakings embedding the Solvency II principles of risk management into their governance structure and operations, as the European Union progresses towards the implementation of Solvency II.</p> <p>We however consider that the Guidelines do not recognise this period as a preparatory phase.</p> <p>The interim Guidelines should focus on the undertaking's level of preparedness. Instead of stating</p>	

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that national competent authorities should ensure that undertakings have in place certain elements of the Solvency II framework during the preparatory phase, the Guidelines should state that national competent authorities should ensure that undertakings are making appropriate progress towards the implementation of certain elements of the Solvency II framework during the preparatory phase.

The Guidelines should be applied on a best effort basis as is not appropriate to require undertakings to increase the costs of compliance by requiring a piecemeal implementation of Solvency II regardless of their Solvency II implementation priorities and resources.

The current approach establishes too prescriptive requirements that fail to provide proper incentives and weakens the risk culture of undertaking, leading Solvency II away from its objectives. We would suggest that the Guidelines are redrafted accordingly with a principle and outcome based approach, which is the objective of the Solvency II Framework from the outset.

We list below some specific comments - the comments apply to both individual and group level - that we believe EIOPA should take into consideration.

- Overall it is difficult to understand if undertakings are required to comply with Level 1 and draft Level 2 requirements in addition to these Guidelines during the preparatory phase.

The Guidelines are drafted by reference to an article in Level 1 but instead of mirroring the underlying article, they seem to replicate the Technical Standards or Level 3 guidance for which, we add, no consultation has been done.

As such, the Guidelines expand on principles and requirements that are not included in these Guidelines as well as in several regulatory or supervisory regimes and that are not within EIOPA's remit. If the intention is for national competent authorities to introduce, in addition to these Guidelines, Level 1 and draft Level 2 requirements into their regulatory or supervisory regimes, we stress the importance of EIOPA assessing how it will be assured that those will be

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implemented on a convergent manner.

Besides being ambiguous, this approach also leads to the introduction of a level of detail that is not appropriate.

- The roles and responsibilities of functions are overly prescriptive and are not appropriate for the preparatory phase.

Undertakings should be allowed to decide on their organizational, governance and risk management solutions as long as it is assured a clear allocation and an appropriate segregation of responsibilities as well as the compliance with the Solvency II principles.

This is especially relevant for the risk management function, the actuarial function and the compliance function, which are part of the so-called second line of defence. We believe that the overlaps contained in the current proposal (see detailed comments) in terms of responsibilities and tasks are an indicator that the Guidelines and the explanatory text should be rephrased providing more flexibility for undertakings to define their own organizational solutions.

This level of detail, besides being inconsistent with a principles based framework is especially not adequate for a preparatory phase.

For example, in the specific case of the actuarial function, considering that there is no framework for the valuation of technical provisions in the interim period and that the task of the actuarial function is only relevant for the submission of interim information to the supervisory authority, we could have expected fewer requirements regarding data quality, testing against experience and even reporting to the Administrative, management or supervisory body.

The Guidelines on the actuarial function extend well beyond the expectations of the actuarial function's remit. In some cases, as indicated in our detailed comments, are even inconsistent with Level 1 and draft Level 2.

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- The Guidelines on policies are too ambitious as preparatory work for Solvency II and in some cases even impracticable.

The Guidelines expand significantly on the current Level 1 and draft Level 2. We consider this to be too ambitious as preparatory work for Solvency II, namely considering that after implementation of Solvency II adjustments may be expected.

Furthermore we consider that it is very burdensome to demonstrate compliance with every single item. We think that this is not in line with a principle-based approach, targeted at precisely What is to be achieved rather than How

- Several requirements go beyond what is required in Level 1 and draft Level 2.

The current Draft guidelines on the following issues regarding the system of governance are not in line with Level 1 and Level 2 and should therefore be amended.

- Fulfilment of fit and proper requirements by all of the undertaking's personnel.
- Fulfilment of fit and proper requirements by all persons employed by the service provider or sub service provider.
- Application of outsourcing requirements to activities other than critical or important activities of the key functions.
- Whistle blowing role of the internal audit and rotation of staff assignments.

- The guidelines on risk management are not fully aligned with the ORSA requirements.

Careful consideration is needed in order not to introduce in the System of Governance requirements already part of other tools as illustrated by the requirement on stress testing, capital management policy and analyses of effectiveness of all risk mitigation techniques employed.

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- The guidelines on outsourcing are overly burdensome and further clarification on the scope would be useful.

Outsourcing should be limited to insurance and reinsurance activities. This is in line with art. 38 and art. 49 Solvency II Framework Directive. Otherwise there may be a possible violation of the principle of proportionality when applying these provisions to all outsourcing activities of the undertaking.

The requirement of business contingency plans including exit strategies goes beyond what is sensible for all cases of outsourcing and more so for a preparatory phase.

Moreover, it is not clear if the outsourcing requirements are to be applied only for new contracts or all existing contracts. We believe that the guidelines should not be applicable to existing agreements during the preparatory phase.

- It is difficult to fully understand how to cater for proportionality and flexibility.

It is referred in annex I of the Consultation Paper that the level of detail and scope of the Guidelines reflect the fact that the Guidelines are issued in order to prepare for Solvency II and not for its full application. However, some of the Guidelines seem not to consider the proportionality principle and in some cases seem more prescriptive and are even inconsistent with Level 1 and draft Level 2.

We would propose that the “phasing-in” described in the cover note (1.4, 1.5, 4.3 and 4.6) is also included in these Guidelines and added the fundamental principle that is the nature and complexity of the business as well as assured consistency with Level 1 and draft Level 2.

- The status of the explanatory text is unclear.

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	<p>The explanatory text, although not subjected to consultation, it is said to provide additional information and examples but it seems to a large extent to go beyond that and contains numerous additional requirements which are granular and prescriptive, and in some cases not even mirror the current proposed Guidelines.</p> <p>We believe that the explanatory text should either be eliminated or revised and included in the consultation process.</p> <p>It is important that the entrepreneurial freedom of undertakings to organize the business is not unduly restricted by way of these guidelines (including the explanatory text) and that an inappropriate additional administrative burden for the undertakings is avoided.</p>	
<b>Introduction General Comment</b>		
1.1		
1.2	The scope of this requirement is too wide; it includes also the prudent person principle and governance of own funds. We suggest that Articles 93 and 132 do not apply until SII is in force.	
1.3		
1.4		
1.5		
1.6		
1.7	It is required that NCAs send a progress report to EIOPA on the application of the Guidelines. However, Art. 16 EIOPA Regulation does not mention such a requirement.	
1.8	We agree with the statement that “ this does not imply that undertaking’s investment portfolios already have to be changed to the extent undertakings would consider necessary when the Solvency II regime is fully applicable”. As this is a material consideration in NCAs’ application of the “prudent person” principle we propose that it is included in a Guideline in Chapter IV.	
1.9	As stated in the introduction, there is no framework for the valuation of technical provisions in	

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	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 fewer requirements regarding data quality, testing against experience and even reporting to the AMSB which will not be interested in such information. We are concerned that Guidelines in chapter VIII would raise significant expectations from NCAs.	
1.10	In the cover note, EIOPA proposes that Guidelines are applied in a manner that is proportionate and allows for some flexibility through provisions for “phasing-in”. Those provisions should be included on the Guidelines on the System of Governance (see General comment). We also would prefer the word “required” instead of “expected”, as the principle of proportionality should always be applied. It is not just an expectation.	
1.11		
1.12		
<b>Section I. General Comments</b>		
1.13	In order to include the proportionality principle in the guidelines, we would include at the end of the sentence: “in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance undertakings”.  See our general comments on the need to focus on the preparedness of undertakings and to apply the guidelines on a best effort basis.	
1.14		
1.15	The proposed reporting dates could unnecessarily force NCAs to push undertakings to an earlier application.  Also, as mentioned above, the EIOPA Regulation does not require such a report.	
<b>Section II. General Comments</b>		

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**Chapter I General  
Comments**

The timetable established by EIOPA for the return of information should take into account the legal time required for the transposition of texts.

It should be assured the alignment of the terminology of these Guidelines with Level 1 and Level 2 and that Guidelines do not impair a holistic view of risks. For example, should not be identified organisational units and functions as the framework directive does not require this and undertakings will lose necessary organisational flexibility. This is especially true for the actuarial function and the risk management function which have strongly linked tasks.

1.16

This guideline exceeds the requirements included in Article 41(1) of the Directive.

Guideline 3 refers to article 41 of Directive 2009/138/EC. It to introduces detailed level 3 guidance focusing on the relationships of the AMSB with specialised committees, but is silent on the need to comply with art 40 (i.e. that the AMSB is ultimately responsible for compliance with the laws, regulations and administrative provisions adopted in relation to the Directive). If the objective is to imply that the AMSB cannot be released from its responsibilities, that is not accomplished by this detailed Guideline. As referred to in the General comment, we ask EIOPA to clarify wheter undertakings are expected to comply with Level 1 as well as these Guidelines in the interim period.

Furthermore, besides the AMSB being typically involved in any action it initiates we suppose that « any committee it establishes » refers to committees established with respect to the requirements of the Solvency II System of Governance. Clarity would be helpful as regular supervision should not be extended to any “normal” business activity”.

The explanatory text could also be improved e.g. it mentions that « administrative, management or supervisory body » is shortened by the term « AMSB »; however, this is not the case throughout the whole Explanatory Text.



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1.17	<p>See comment above on the lack of clarity on the aim of the Guidelines, namely if this is to be understood as complementing article 246 of Directive 2009/138/EC not yet transposed into national laws.</p> <p>This guideline exceeds the requirements included in Article 41(1) of the Directive as it is possible to fulfil the requirements set out in the Directive without requiring the interaction with all committees created.</p> <p>In addition, Interactions with administrative, management or supervisory bodies of “all entities” within the group would cause some implementing issues about organisation of group. The guideline should not duplicate the same tasks (and responsibilities) in different entities of the group (parent company and subsidiaries).</p> <p>The General comment, the Explanatory Text also goes beyond the Guidelines and enhances ambiguity. In this case, at first, seems to develop the requirement on the consistent implementation of the risk management and internal control systems and reporting procedures following article 246 of Directive 2009/138/EC; however, such requirement is not included in Guideline 3.</p>	
1.18	<p>The explanatory text mentions in its paragraph 1.10 that a separation of functions needs to be observed on all levels of the undertaking, including AMSB. We appreciate that in accordance with the principle of proportionality such a separation is not expected in any possible case. There may be undertakings where a separation within the AMSB is not possible.</p> <p>Also the aim of this guideline should not be to require undertakings to set up too many codes of conducts or to have structures that are too complex.</p>	
1.19	<p>The corresponding explanatory text mentions in its paragraph 1.8 that « inquiries addressed by the group supervisor ... may be expected where changes occur... ». The background of this paragraph is however not clear. From our point of view, a supervisor may address such questions at any time.</p>	

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1.20	EIOPA's expectation when referring to the need for the AMSB to knowi "the purpose" of all its different entities is unclear. There is no reference to this requirement at level 1..	
1.21	<p>Less complex undertakings may, accordingly to draft Level 2 and except in respect to the internal audit function, allow a single person or organizational unit to carry out more than one function. This should also be possible for the holding of a key function by a member of the ASMB.</p> <p>Outsourcing should be foreseen in line with article 49 of Directive 2009/138/EC.</p> <p>In addition, for proportionality reasons, the identity of the persons who effectively run the undertaking or are responsible for other key functions can be the same in different entities of the group.</p>	
1.22	It is unclear what would be the interaction and concrete tasks of some functions required at Group level (e.g. actuarial function).	
1.23	<p>The requirement in the second sentence could be a problem during the preparatory phase before relevant changes to company law have been made.</p> <p>The reference to article 41 of Directive 2009/138/EC is unclear as this legal provision does not require the four-eyes principle.</p> <p>In order to promote harmonization, concepts such as "significant decisions" should be included in the guideline instead of covering it in the explanatory text.</p>	
1.24	<p>The requirement to document how information from the risk management system has been taken into account is very far reaching, as the risk management system is a wide concept. There is no reference to this requirement either in article 41 or in the related draft Level 2 provisions. We question whether it is appropriate to include a new requirement such as this in preparatory Guidelines and suggest that the last part of this sentence (from "and how information from...") is deleted.</p> <p>This Guideline should apply to "material" decisions only, consistent with the principle of</p>	

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	proportionality.	
1.25	Guideline 8 expands on the need of the AMSB to determine the scope and frequency of internal reviews of the system of governance. However, as observed for the other Guidelines, EIOPA is silent on the Level 1 requirement that requires regular reviews. . It is not therefore clear if NCAs should apply Level 1 to undertakings as well as these Guidelines.	
1.26	The Guideline mentions that is « up to the undertaking to decide who is to perform the reviews within the undertaking ». The explanatory text mention in its para. 1.23 that « the internal audit function could provide input ». In our view the internal audit function is mainly responsible for the internal review of the governance system according to the three-lines-of-defence-model.	
1.27	Proportionality also needs to apply with regard to the level of completeness required for documentation.	
1.28	<p>Guideline 9 does not clearly set the written policies that undertakings are required to have under art 41 (3) of Directive 2009/138/EC. However, the explanatory text which is not subjected to public consultation, says that Guideline 9 applies not only to policies referred in 41 (3) but also to sub-policies in article 44 (2) and the model change policy.</p> <p>We underline that 1.28 expands significantly on the current Level 1 and draft Level 2. We consider that the proposed content of the policies is too ambitious as preparatory work for Solvency II, considering that after implementation of Solvency II adjustments may necessarily be expected namely on bullets 1.28 b) to d).</p> <p>The requirement is too prescriptive and do not differentiate what is a policy and a procedure.</p> <p>The obligation described under point d) to report “any” fact is difficult to apply in practice. Therefore it is proposed to replace “any” fact by “significant” facts.</p> <p>Also paragraph 1.30 of the explanatory text regarding the review of written policies might be too detailed. It would be sufficient to confirm that the review has to be appropriately documented, and 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.</p>	

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1.29	See comment above. Considering that no minimum set of written policies is required in Guideline 9, can this paragraph be interpreted as applying to policies, <u>if</u> developed, that cover the key functions?	
1.30	According to the explanatory text, it is not necessary to have contingency plans for every activity of the undertaking and contingency plans refer to operational risks. It is suggested to refer explicitly in the guideline to operational risks.	
<b>Chapter II General Comments</b>		
1.31	<p>The Impact Assessment (2.63) states that EIOPA decided not to require notification for persons responsible for key functions. However, 1.31 suggests that this will be a requirements since NCAs must ensure that persons with key functions are fit. We would have expected that the NCAs should instead ensure that the mechanisms and policies are designed to assure this.</p> <p>1.31 is unclear, namely if the reference to «take account of the respective duties allocated to individual members » is meant just for the members of the AMSB (as foreseen in draft Level 2) or also other persons that effectively run the undertakings or have other key functions.</p> <p>The alignment of these Guidelines with Level 1 should be ensured. Guideline 11 mentions the « administrative, supervisory or management body »; however the « administrative, supervisory or management body » is not mentioned in Article 42..</p> <p>The term AMSB aims at one of three bodies. With a view to a two-tier board system, it is not clear which body is addressed: the management body (responsible for the management of the undertaking) or the supervisory body (responsible for the oversight of the undertaking). Therefore, it should be clarified which body is the addressee. Without such a clarification, the principle of proportionality can be impaired where the supervisory body is concerned but has no mandate according to the two-tier board system.</p>	

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1.32	<p>It should be made clear that during the preparation phase there is no requirement to adjust the members of the board.</p> <p>Article 263 SG11 IM Draft says that fit persons should have knowledge about the insurance sector and other financial sectors. Aligning terminology throughout the levels would help implementing Solvency II. Please also replace “markets” in 1.32 a) by “sectors” if deemed appropriate.</p> <p>Paragraph 1.35 of the explanatory text states that “experience of other employees within the undertaking could be taken into account as a relevant factor.” We recommend to add also the risk profile and activities of the undertaking to include the proportionality aspect.</p>	
1.33	<p>The Guideline should be more specific by mentioning that the requirement of ‘proper’ is limited to persons who effectively run the undertaking or have other key functions in order to be coherent with guideline 11. This should also be considered in paragraph 1.52 of the explanatory text.</p> <p>The Guideline should specify that only relevant criminal, financial, supervisory aspects should be taken into account in the assessment whether a person is ‘proper’ since the guideline mentions that the assessment has to be made on relevant evidence. In addition, Guidelines should not extend the scope and commitments of criminal sanctions set out by criminal national law.</p> <p>The explanatory text, paragraph 1.50 mentions the expectation that even the appearance of conflicts of interests should be avoided. This is critical because such an « appearance » is dependent on the personal view of the observer. A conflict of interest is a matter of fact and therefore should not be subjected to such a personal view.</p>	
1.34	<p>The Solvency II framework Directive does not explicitly require a policy on fit and proper requirements. Accordingly, it should be up to the undertakings (entrepreneurial freedom) to establish a policy on fit and proper criteria and procedures or simple refer to the requirements stipulated in Solvency II.</p>	

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	<p>Sub-paragraph b) requires « a description of situations that give rise to a re-assessment of the fit and proper requirements ». In our opinion there is no additional use of documentation for such contingencies. Besides fit and proper should be examined on an on-going basis as stated in the Guideline and not event driven. As such we propose that b) is deleted.</p> <p>Sub-paragraph c) goes further than the Solvency II Directive and draft Level 2 since it requires fit and proper requirements to be fulfilled by all personnel. It is inappropriate to impose any Guidelines in the phasing-in with a wider scope than Level 1. As such we propose that c) is deleted.</p> <p>In the explanatory text, paragraph 1.53 mentions under a) « reasons to believe that a person will discourage the undertaking from pursuing business in a way that is consistent with applicable business ». The reasoning behind this is unclear. Moreover, the whole paragraph 1.53 stays in the field of guestimates. We therefore consider that this explanation creates ambiguity and propose to delete it.</p>	
1.35	<p>Level 1 and draft Level 2 do not require that all persons employed by the service provider or sub service provider are subject to the fit and proper requirements of Article 42. If this would be the case, outsourcing would be too burdensome and even unpractical.</p> <p>Guideline 14 should assure that only those persons employed by the service provider or sub service provider who have functions subject to the requirements of Article 42 are subjected to this Guideline.</p> <p>Furthermore, this obligation is very difficult to apply in practice when an insurance undertaking outsources a key function to another undertaking, e.g. a consultancy undertaking. In such case, the latter should be responsible to assess the fit and proper requirements of all of its employees and to confirm this to the insurance undertaking. Therefore it is proposed that the insurance undertaking monitors the service provider on the application of the fit &amp; proper requirements.</p> <p>It is paramount that this is not applicable for existing agreements during the preparatory phase.</p>	

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1.36	<p>This Guideline goes beyond what is required in Level 1 and draft Level 2..</p> <p>The Guideline should be restricted to outsourcing related to critical or important activities of the key functions. For example specific IT outsourcing could be so specific and require detailed knowledge of IT systems that it is not possible to have this knowledge at the insurer itself.</p> <p>Also level 1 and draft Level 2 do not demand for a person within the undertaking which is fit and proper. As stated in paragraph 1.55 of the explanatory text « knowledge required would not need to be as in depth as that of the relevant person(s) at the service provider. » It should be sufficient if the person is able « to challenge the performance and results of the service provider ». It should also be allowed to choose members of the AMSB to fulfil this requirement given that they possess the necessary knowledge.</p>	
<b>Chapter III General Comments</b>		
1.37	In the explanatory text, paragraph 1.69 introduces additional risks. As they are not mentioned in Article 44 Solvency II Directive, they should not be mentioned here.	
1.38	<p>Guideline 15 states in c) that the risk management system should include at least « the identification, measurement, management and control of risks at group level. »</p> <p>However, art. 246 of the Solvency II Directive demands only «adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks ».</p>	
1.39	It is required that the entity responsible for fulfilling the governance requirements at group level ensures that the specific operations and associated risks of each entity in the group are covered .	

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	We believe that this Guideline goes further than the Solvency II Directive and should as such apply just to material operations and associated risks in line with art 246.	
1.40	<p>As observed for other Guidelines, the scope of Guideline 16 is unclear: namely if undertakings will also have to comply with Level 1 (art 44 (2)) and draft Level 2 requirements in addition to this Guideline.</p> <p>Requirements on the risk management policy are too detailed for a preparatory phase. This is problematic since even if undertakings do comply with requirements, it is very burdensome to demonstrate compliance with every single item. We think that this is not in line with a principle based approach, targeted at precisely What is to be achieved rather than How.</p> <p>Sub-paragraph e) requires the carrying out of regular stress tests. However, the framework directive uses the term stress test only in connection with the review of Solvency II but not as a regular requirement – this is in line with SCR and ORSA being the tools dedicated to determine capital requirements. As such, and considering that stress tests are already included in Guideline 7 (1.33) of the Proposal for Guidelines on the Forward looking assessment of the undertaking’s own risks, there is no need for any additional requirement under the “System of Governance” and (e) should be deleted.</p> <p>It should be clarified if, contrary to the introduction to these Guidelines and the cover note, the wording «regulatory capital requirements» in sub-paragraph c) is a reference to Solvency II requirements.</p>	
1.41		
1.42		
1.43	<p>As observed with other Guidelines the scope of Guideline 18 is unclear: namely if undertakings will also have to comply with draft Level 2 (art 251 SG3) apart from this Guideline, which we consider to be too detailed for a preparatory phase.</p> <p>It is hardly possible for policies to cover all potential designs of products. Processes, on the other</p>	



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	<p>hand, should be designed so that in the “new product process” risk mitigation is properly taken into account. As such, we propose the following rephrase of c), d) and e):</p> <p>c) the identification of the risks arising from the undertaking’s insurance obligations, including embedded options and guarantees <del>surrender values in its products</del>;</p> <p>d) how, in the <u>process of designing</u> of a new insurance product and the premium calculation, the undertaking takes account of the constraints related to investments; and</p> <p>e) how, in the <u>process of designing</u> of a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.</p>	
1.44	<p>See comment above on the uncertainty of having to comply with draft Level 2 apart from this Guideline.</p> <p>This Guideline is too detailed for a preparatory phase.</p> <p>Furthermore, sub-paragraph b) says that the risk management policy should contain a description of the undertakings’ processes, including its IT system. In our opinion a risk policy should not be the place to cover these topics. Processes and IT are usually documented elsewhere. The policy should only contain ‘an explanation on how risks in processes and/or IT are specifically monitored and managed within the company’.</p> <p>A different interpretation might be that the undertaking is required to have an IT system in place for operational risk management. If this is the case: we are not in favour of setting risk management IT system as a requirement. The IT system is an instrument and not a goal.</p> <p>Sub-paragraph c) requires undertakings to document in the risk management policy “risk tolerance limits with respect to the undertaking’s key operational risk areas.” This bullet raises the following comments:</p> <p>As stated in paragraphs 1.90 and 1.91 of the explanatory text, operational risk is very hard to isolate and to assess. Often qualitative and quantitative assessments are necessary. Given the</p>	

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	<p>difficulties of quantifying operational risks (esp. rare events with a high impact) risk tolerance limits are unsuitable for qualitative elements.</p> <p>The meaning of “key” operational risk areas is unclear..</p> <p>Sub-paragraph c) is already included in the risk management policy requirements under 1.40 d).</p> <p>We suggest c) is deleted</p>	
1.45	<p>Neither Level 1 nor draft Level 2 require operational data banks. We propose rephrasing the second sentence: “For this purpose, it should set up a system for collecting and monitoring operational risk events”.</p>	
1.46	<p>As referred previously for the other Guidelines, Guideline 19 goes beyond article 44 of the Directive as these tasks are not mentioned in article 44. It could be seen as an interpretation.</p> <p>Besides, neither Level 1 nor draft Level 2 require operational risk stress scenarios. The analysis of the risk profile where appropriate by stress tests and scenario analysis should be treated only under ORSA (or in the validation of internal models). As such, we propose that this paragraph is deleted.</p> <p>Furthermore, the explanatory text [paragraph 1.97] states that ...”all personnel are aware of the importance of this type of risk”. The implication of “all personnel” is very far reaching and the effort required to train all staff would potentially outweigh the benefits.</p>	
1.47	<p>We propose that this Guideline is deleted as if such analysis is necessary / appropriate it should be part of the ORSA.</p>	
1.48	<p>See previous comments on the uncertainty of having to also comply with draft Level 2 apart from this which, is too detailed for a preparatory phase.</p>	

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	<p>We also propose that b) is rephrased so that “counterparties for reinsurance and other risk mitigation” are treated equally, e.g. b) principles for the selection of <del>reinsurance</del> counterparties for reinsurance and other risk mitigation <u>as well as</u> <del>and</del> procedures for assessing and monitoring the creditworthiness and diversification of <u>these reinsurance</u> counterparties.</p> <p>Regarding d) we consider that liquidity management is an important part of the insurance undertaking’s risk management and not only with regard to reinsurance. Since guideline 24 deals specifically with liquidity risk it is suggested to move point d) of guideline 21 to guideline 24 on liquidity management.</p> <p>We would welcome clarification on why unit-linked policyholders are explicitly mentioned. Any policyholders should receive benefits in line with what was communicated to them. Furthermore, we believe this to be covered by the terms of the contracts and the design of the products. As such, further clarification is sought as to the exact intention behind this requirement.</p>	
1.49	<p>See previous comments on the uncertainty of having to also comply with draft Level 2 apart from this Guideline which is too detailed for a preparatory phase.</p> <p>There is a duplication in c) and d). We suggest that the reference to stress test is deleted in c).</p>	
1.50	<p>See previous comments on the uncertainty of having to also comply with draft Level 2 apart from this Guideline which is too detailed for a preparatory phase.</p> <p>Furthermore, the guideline implies that investment decisions can be made in isolation. However, it should be possible to connect them with the liabilities.</p> <p>As commented in 1.8, the intention of EIOPA of not implying that undertakings’ investment portfolios already have to be changed to the extent undertakings would consider necessary when the Solvency II regime is fully applicable, should be stated in a Guideline and not just referred in the introduction. The guideline should clarify how that principle interacts with the requirements on</p>	

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	<p>investments.</p> <p>Guideline 23 and Guideline 25 could be integrated into one Guideline as they cover the same topic with the title 'investment management' .</p> <p>Since guideline 24 deals specifically with liquidity management it is proposed to move point d) of guideline 23 to guideline 24.</p> <p>Furthermore bullet h) should be dropped as it is already properly covered by Art. 132 of the Solvency II Directive, under the 'Prudent Person Principle'.</p> <p>The explanatory text, paragraph 1.111, refers to the obligation to carry out an appropriate number of stress tests on a regular basis. However that is not required by Article 132 of the Solvency II Directive. For evaluating the internal investment limits, there should be no obligation to carry out stress tests on a regular basis. Hence, the last sentence in 1.111 of the explanatory text should be deleted.</p>	
1.51	<p>It is proposed to use the title 'liquidity management' which is a better reflection of guideline 1.51.</p> <p>We would 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>In the explanatory text (paragraph 1.118) the obligation to set up “clear agreements governing the usage of excess funds, supervision of each entity’s financial position and regular stress and transferability testing” at group level is not required by the Solvency II Directive. Consequently, we would propose to delete 1.118 of the explanatory text.</p>	
<b>Chapter IV General Comments</b>	<p>In our view the Prudent Person Principle is not a part of the “system of governance” and should therefore not be part of these Guidelines. Naturally all activities of an insurer could be tied to the “system of governance”. But accordingly to Level 1 the Prudent Person Principle is integrated in Art. 132 (Sec. 6, Investments) while all regulations for the “system of governance” are included in Art. 41 et sqq. We believe that the guidelines should follow the structure of Level 1.</p>	

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1.52	<p>1.52 goes beyond what is required by article 132 of the Solvency II Directive. This article does not require NCAs to ensure that the undertaking does not solely depend on the information provided by financial institutions, asset managers and rating agencies. It is rather the task of forthcoming European rules to regulate credit rating agencies (CRA III) to reduce reliance on external ratings. Therefore the requirements in this Guideline should be drafted in the light of Article 5a of CRA III which states that "...insurance and reinsurance undertakings (...)shall make their own credit risk assessment and shall not solely or mechanistically rely on credit ratings (...) Competent authorities in charge of supervising these undertakings (...) shall monitor the adequacy of undertakings credit assessment processes as well as assess the use of contractual references to credit ratings and, where appropriate encourage mitigation of the impact of such references, with a view to reduce sole and mechanistic reliance on ratings, in line with specific sectorial regulations."</p> <p>Furthermore, it is not clear why the development of key risk indicators is required here in the context of investment risk management. As undertakings usually develop a comprehensive set of key risk indicators including risk indicators relating to investment risk management it is suggested there is a general guideline on key risk indicators.</p>	
1.53	<p>According to 4.12 of the Cover Note in order for Guidelines to be applied, undertakings will need to determine their solvency position under Pillar I requirements and this connection applies in particular to aspects of the prudent person principle with regard to investment of assets.</p> <p>However, we do not believe that for the purpose of Guideline 25, undertakings would need to calculate the solvency position under Pillar I. It is sufficient if the undertaking has an adequate understanding of the calculation mechanism that is foreseen to assess the risks associated with the investments.</p> <p>Therefore we would propose to delete bullet 3 of 4.12 of the Cover Note and to clarify that the calculation of the solvency position under Pillar I is not necessary for the application of Guideline 25.</p>	
1.54	<p>The requirement concerning the assessment of the consistency of the investment or investment activity "with the beneficiaries and policyholder's interest" goes beyond what is required by Article</p>	

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	132 of the Solvency II Directive. Article 132 only requires that it is in the best interest of “all policyholders/beneficiaries” and not in the best interest of the individual policyholder.	
1.55		
1.56	<p>We underline that the undertaking has to select the funds or indices available to policyholders of the unit-linked and index-linked contracts in the best interests of all policyholders/beneficiaries taking into account any disclosed policy objectives of the funds. It should be made clear that the undertaking is not required to select the investments of the unit linked contract itself in the best interest of the policyholder/beneficiary.</p> <p>Furthermore, this guideline clearly relates to customer protection instead of prudential regulation and should be covered by conduct of business regulation. We propose to delete the Guideline.</p>	
1.57	See 1.56	
1.58	<p>This Guideline goes beyond what is required by Article 132 of the Solvency II Directive. This Article does not require a separate special process to be applied by the undertaking in order to identify, measure, manage, monitor and control risks of assets not admitted to trading on a regulated market. It should be sufficient that the undertaking sets up a transparent investment process in line with Guideline 25.</p> <p>The introduction of undefined terms such as “complex products” or “difficult to value” does not help harmonization.</p>	
1.59	<p>Besides the uncertainty in terms of the extent of the envisaged requirements (whether or not they complement Level 1/2), the aim of this Guideline is unclear.</p> <p>This Guideline seems to relate to different valuation requirements established at draft Level 2, which would imply the use of mark-to-model for those assets not admitted to trading on a regulated market. If so, the purpose of this Guideline is unclear in the preparatory phase, where undertakings are expected to follow the Solvency I valuation requirements.</p>	

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1.60	<p>We consider that the prescribed guideline contains unnecessary detail. It also does not take into account latest regulatory developments in the field of derivatives, which will among other measures introduce a clearing for OTC transactions, and therefore significantly reduce risks with the quality, security and liquidity of the transactions.</p> <p>Also the provisions primarily make sense in the context of Pillar 1, and specifically the calculation of capital requirements net of risk mitigation instruments. We recommend simplifying the provisions out of the pre-implementation package by keeping just the latter element :‘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’ for the end-of-state guidelines.</p>	
1.61	<p>See comment above.</p> <p>Additionally it is unclear how the principle in 1.8 interacts with the requirements on investments.</p>	
1.62	See comments on 1.60	
1.63	<p>See comment on 1.61.</p> <p>Guideline 30 is an over-interpretation of article 132 (2) of the Solvency II Directive, which states that “in the case of a conflict of interest, insurance undertakings, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policy holders and beneficiaries”.</p> <p>EIOPA should stick to the Level 1 text and not overinterpret it.</p>	
<b>Chapter V General Comments</b>	The Guidelines mentioned here are not directly related to the respective articles as mentioned in the Directive. Naturally all activities of an insurer could be tied to the ‘system of governance” and the ORSA but the reference to article 41 is not directly linked to capital management.	

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	Also consideration is needed to assure that Guidelines are consistent across the blocks. Having a medium-term capital management plan in the system of governance and forward looking assessments according to the planning period may not be appropriate.	
1.64	<p>The legal hook for requiring a capital management policy is not apparent. Neither art. 41 nor art. 93 of the Solvency II Directive require a Capital Management Policy. This should be captured by the ORSA.</p> <p>A governance structure taking into account Solvency II requirements can not be made fully operational during the preparatory phase. We do not agree with undertakings having to develop and implement a shadow regime during the preparatory phase to cover e.g. capital management requirements.</p> <p>The guideline seems to imply that local entities could be limited to paying dividends now if on a stressed forward-looking basis their capitalization would fall short.</p> <p>As such we propose that this Guideline is deleted.</p>	
1.65	See comments on 1.64. We propose to delete this Guideline as long as insurance undertakings are operating under a Solvency I capital regime. While inputs from the ORSA and risk management system have an added value once Solvency II is in place, it makes no sense to integrate these elements within the capital management plan during the interim period under Solvency I.	
1.66	See comments above	
<b>Chapter VI General Comments</b>	As a general statement, we feel that the level of detail with which the roles and responsibilities of each of the key functions are described is excessive. We strongly feel that each undertaking should be given the freedom to choose how to organize its internal functions, with the caveat of preserving independence of control tasks from operations	
1.67	Guideline 33 states that “all personnel” should be aware of their role in the internal control system	



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	It should be clarified that only such employees who are affected by the internal controls should be aware of their role in this system. Otherwise one could get the impression that everybody within the undertaking should be informed about the internal control system, even if she/he is not affected.	
1.68	Reference is made to a need for consistent internal control systems across the group. Surely this must be caveated with "as appropriate and applicable to EEA regulated entities". What suits entity x may not be suitable for entity y and will also depend on the purpose of a particular entity and, specifically, whether or not it is regulated. If the caveat is not added, how does this work with jurisdictional authority in terms of saying what must apply to a legal entity outside EEA?	
1.69	Guideline 5 requires appropriate implementation of a compliance function, but the guidelines do not describe the role of Compliance.  It would be helpful to clarify that the role of Compliance as a core function remains principle-based. It should be allowed for the compliance function duties to be shared or carried out with or by other functions during the preparatory phase.	
<b>Chapter VII General Comments</b>	The tasks of the NCAs with respect to the internal audit function seem to differ from the tasks for the other functions as illustrated by our comments on 1.75	
1.70	We welcome the absence of strict requirements on segregation from other operational functions which allows the internal audit function's duties to be shared or carried out by other functions. We would underline the benefits from a convergence point of view of EIOPA assuring that this flexibility is clearly understood by NCAs.  The explanatory text also needs to be clarified. Paragraph 1.149 states that the internal audit function should "examine and evaluate the functioning, effectiveness and efficiency of the internal control system". Efficiency should not be at the same level with functioning and effectiveness as the internal audit function should consider but not examine and evaluate economic aspects. We propose to rephrase the explanatory text by stating that "efficiency should also be comprised in the evaluation".	

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1.71	<p>There is no requirement in the Solvency II Directive for whistle blowing. The proper order is for the internal audit function to report internally and then it is up to the AMSB to decide how to act.</p> <p>The internal audit is not an extension of the supervisory role. As such, this Guideline extends the role of the internal audit and contradicts the independence introduced by Guideline 35.</p> <p>Furthermore, b) is unclear. We do not understand whether it implies that reporting should be regular or if it should be on an ad/hoc basis or if only significant matters or problems encountered should be reported. We propose to delete b).</p> <p>In sub-paragraph c), it is not clear what is meant by rotations of staff assignments', e.g. if the focus is on rotations between the internal audit team and the business or within the internal audit team (i.e. at assignment level). Some further clarification will be useful to minimize subjectivity in interpretation. One could also argue that this specific requirement is not necessary as the Guidelines already include the requirement for independence. We add that the Solvency II Directive does not require any kind of rotation of staff assignments and could be burdensome for small entities or where special know-how for audits is required. We would propose to change the wording into "criteria for ensuring the objectivity".</p> <p>We further propose the following edit to Guideline 36: 'In accordance with Articles 41 and 47 of Solvency II, national competent authorities should ensure that the undertaking has an internal audit policy <b>and related procedures documents</b> which cover at least the following areas....'</p> <p>The explanatory text needs to be clarified. We would ask for additional guidance as to what is meant by "audit programme" in paragraph 1.1.59, "audit cycle principle" in paragraph 1.1.53 and whether this latter requirement was made in line with its actual technical terminology. This latter requirement appears to conflict with the risk-based audit approach requirement and as such it should be revisited.</p>	
1.72		
1.73	<p>We suggest that the requirement under point b), which refers to the determination of internal audit plan priorities, is clarified. In particular, we propose to add, besides the requirement of a risk-</p>	

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	based approach, that the audit programme should remain a relatively flexible tool that needs to be adapted according to the audit findings and should allow for a periodic review of the activities, according to the audit cycle principle (cf. explanatory text 1.153).	
1.74		
1.75	<p>This guidelines states that NCAs should “ensure that the recommendations of the internal audit function ... include the envisaged period of time to remedy the shortcomings...” We would have expected that the NCAs should instead ensure that the mechanisms and policies are designed to assure this.</p> <p>Also instead of mentioning the “persons” responsible for the remedy of shortcoming, the respective unit should be mentioned here.</p>	
1.76		
<b>Chapter VIII General Comments</b>	With regard to the Actuarial Function, its tasks and responsibilities as well as the internal organization adopted by an undertaking, we consider that the level of detail with which the roles and responsibilities of each of the key functions are described is excessive: we strongly feel that each undertaking should be given the freedom to choose how to organize its internal functions, with the caveat of preserving independence of control tasks from operations.	
1.77	<p>We agree that there could be potential conflicts of interests in cases 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 arise in case additional tasks or activities are added to other key functions of Solvency II. This should therefore be deleted.</p> <p>We suppose the objective was to refer to additional tasks or activities to the tasks and activities of <u>persons performing</u> the actuarial function.</p> <p>In some countries certain tasks and responsibilities are required by law to be performed by a chief actuary or similar. This can make it impossible to comply with the Guidelines on the actuarial function during the preparatory phase and should be taken into account.</p>	

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	The explanatory text adds requirements that go beyond the Guideline.	
1.78	<p>The scope of the actuarial function is overly prescriptive.</p> <p>Paragraph 1.162 of the explanatory text is also 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>	
1.79	<p>We do not support the enforcing of Solvency II Pillar I calculations at this stage.</p> <p>If nevertheless, EIOPA decides to take this further, we propose that EIOPA considers the following rephrasing: “In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking identifies any inconsistency with the requirements set out in Articles 76 to <del>85</del><u>83</u> of Solvency II for the calculation of technical provisions and <del>implements</del> identifies and ensures the implementation of corrections as appropriate.”</p> <p>On the rationale behind this proposal:</p> <ul style="list-style-type: none"> <li>- Articles 84, 85 deal with requests from NCAs and not with the calculation of technical provisions in its core. The actuarial function will typically contribute to the processes triggered by such requests.</li> <li>- According to article 48 the actuarial function coordinates the calculation of technical provision and ensures the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions etc. As such, it has to ensure that corrections are implemented as appropriate but it will not in general implement the corrections itself.</li> </ul> <p>The intention described in 1.9 (“these tasks are mainly relevant with regard to the submission of information to supervisor”) should be added.</p> <p>Furthermore, it is not immediately clear what the intention of paragraph 1.164 of the explanatory text is in relation to the guideline. We suggest that “complete” is replaced as is unreasonable to</p>	

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	<p>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> <p>We further underline that, in accordance with the cover note, these requirements would need to be revisited following the developments on OMII at the end of the year.</p>	
1.80	We do not support the enforcing of Solvency II Pillar I calculations at this stage.	
1.81	<p>We do not support the enforcing of Solvency II Pillar I calculations at this stage.</p> <p>If nevertheless, EIOPA decides to take this further, we suggest tha the guideline is rephrased in a way that no undue instability in valuation models is introduced.</p> <p>It should be recognized that also small variations of certain parameters, e.g. implied volatility, could lead to strong variations of technical provisions. This may for example be true for the valuation of options and guarantees in participating life insurance contracts. In these cases the instability is a feature of the underlying product that is valued and not of the valuation model itself.</p>	
1.82	<p>Data quality standards are not included in the Solvency II Directive. We do not support enforcing requirements not set out in the Directive. While consistency of internal and external data used in the calculation of the technical provisions has to be ensured, it is important to clarify that the management of data quality is the responsibility of the whole undertaking and not only of the actuarial department. The actuarial department has a monitoring function on data quality, as a second line of control, while the entire organisation has a responsibility in relation to the management of data quality.</p> <p>1.169 of the explanatory text 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. A further line stating that actuarial judgement and expert</p>	

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	opinion in absence of sufficient data is permissible needs to be included.	
1.83	<p>We do not support the enforcing of Solvency II Pillar I calculations at this stage.</p> <p>This Guidelines is not consistent with draft Level 2 measures according to which the actuarial function should “compare and justify any <u>material</u> differences in the calculation of technical provisions from year to year”</p>	
1.84	<p>We do not support the enforcing of Solvency II Pillar I calculations at this stage.</p> <p>If nevertheless, EIOPA decides to take this further, we underline that paragraph 1.172 of the explanatory text should be relaxed to permit consideration of other, more subjective “evidence” e.g. emerging actuarial leading-practice, expert judgment and research. We suggest that it is amended to read “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>We do not support the enforcing of Solvency II Pillar I calculations at this stage.</p> <p>If nevertheless, EIOPA decides to take this further, it is unclear to which tasks the Guideline is referring.</p> <p>Actuarial reserves also depend on the claims handling practice. Although this could be considered as part of the underwriting policy it should be mentioned explicitly for clarity reasons.</p> <p>Proportionality should be applied depending on the importance of the reinsurance program.</p> <p>The explanatory text for Guideline 45 infers that an undertaking’s actuarial team is required to do work independently from its underwriting or reinsurance teams. The subject of reinsurance and underwriting opinions and the actuarial function is an area where there is currently little consensus on what is required, whether on the part of the actuarial profession, industry or regulatory bodies.</p>	

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	We therefore suggest that this matter is excluded from the Guidelines until further consensus has developed and/or further guidance is issued.	
1.86	<p>This Guideline extends well beyond expectations of the actuarial function's remit. The actuarial function should contribute to the modelling but there shouldn't be any additional formal review of the tasks of the risk management function other than the review by internal audit.</p> <p>Also dependencies are not mentioned in the Level 1 or draft Level 2 text in this context.</p> <p>We propose that this Guideline is deleted.</p>	
1.87	<p>We do not support the enforcing of Solvency II Pillar I calculations at this stage within the actuarial function.</p> <p>If nevertheless, EIOPA decides to take this further, we assume that following the implementation of this "Interim measure" any annual report will be first submitted in 2015 over 2014.</p> <p>We further underline that the required 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 is more appropriate than a single report. An undertaking should be permitted to submit to the supervisor a consolidated set of sub-reports which had been presented to the internal administration bodies. Different persons/functions could produce these sub-reports, e.g. they could be submitted by actuarial, underwriting, reinsurance functions depending on the 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>	
<b>Chapter IX General Comments</b>	Further clarification on scope might be useful, i.e. applicability only for new contracts or all existing? In some points we consider the requirements to be overly burdensome, e.g. the requirement of business contingency plans including exit strategies.	

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1.88	<p>It is noted that not only a function can be outsourced, but also an insurance-specific activity (e.g. claims handling). This should be clarified in the guideline and it is suggested that the title of the guideline is changed to ‘critical or important function or insurance-specific activity’.</p> <p>Outsourcing should be limited to <i>insurance</i> and <i>reinsurance</i> activities. This is in line with art. 38 and art. 49 Solvency II Framework Directive. Otherwise there may be a possible violation of the principle of proportionality when applying these provisions to all outsourcing activities of the undertaking.</p> <p>We welcome the definition of critical or important operational function which is workable.</p>	
1.89	<p>We would welcome the introduction of a reference to the Insurance Intermediaries Directive (IMD) in the Guideline as the precisions given in the explanatory text appear relevant. So we suggest adding: “.....intermediary is subject to the outsourcing requirements <b>for activities not subject to IMD</b>”</p> <p>The meaning of “ subject to outsourcing requirements”, is unclear, namely if that is to be understood in the remits of these Guidelines or if EIOPA is also referring to Level 1 and draft Level 2 requirements not yet in force.</p> <p>Further clarity would be also useful in regards paragraph 1.205 of the explanatory text on the intermediation activities not subject to the outsourcing requirements.</p>	
1.90	<p>We agree with the allowance for the Group to determine (and document) governance setup of key functions when a key function is outsourced within the group.</p> <p>Further clarity should however be provided on the purpose of “... ensures that the performance of the key functions at the level of the undertaking is not impaired by such arrangements”. In accordance with the Solvency II provisions on outsourcing the obligations remain with the individual undertakings, regardless of the outsourcing being performed by another group entity. Does EIOPA’s intend that, in the case of intra-group transactions, responsibility is shifted to the parent undertaking?</p> <p>In our view, it should be made clear that outsourcing within a group should be treated differently from outsourcing that does not take place in such a group.</p>	



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1.91	<p>This should not be applicable to existing agreements, during the preparatory phase.</p> <p>We propose the following wording for the last sentence: “For outsourcing of critical or important functions this in particular includes:...</p> <p>Also the requirement of business contingency plans including exit strategies goes beyond what is sensible for all cases of outsourcing. In particular this goes beyond what should be expected from a preparatory phase.</p>	
<b>Section III. General Comments</b>	<p>Different countries or undertakings within the same country will not necessarily be at the same level of preparation when the Guidelines will come into force. In this case, a flexible approach should be adopted regarding for instance the information available at subsidiary level.</p> <p>More generally speaking, given the amount of information requested additional time should be given for groups to proceed with those requirements.</p> <p>We also underline that the influence of the AMSB at group level is often quite limited in regard all group entities. There could be only a group wide responsibility or obligation for the AMSB at group level for implementing any requirements or for steering processes at solo level if the AMSB has the necessary power. As such could be helpful to to include the following reference: “As far as power under company law is given...”</p>	
1.92		
1.93	<p>The Guideline states that “the entity responsible for fulfilling the governance requirements at group level sets adequate internal governance requirements across the group...”.</p> <p>Paragraph 1.224 b) and d) of the explanatory text is more prescriptive as it states that is expected that the AMSB at group level “ensures the overall consistency of the groups’s governance structure” and that the AMSB at group level “has appropriate means to control that each entities in the group complies with all applicable corpoarate governance requirements”.</p> <p>We propose deleting sub-paragraphs b) and d) of paragraph 1.224.</p> <p>The guideline should state explicitly that the allocations of responsibilities at individual level</p>	

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	should support the group's effective risk management process (according to the explanatory text).	
1.94	The wording may be misleading because requires that group governance requirements should not "impair the responsibilities of the AMSB of each entity in the group". Art. 246 (1) of the Solvency II Directive requires the consistent implementation of a governance system within a group. Insofar it may be misleading to demand that the responsibilities of the group entities should not be impaired.	
1.95	The Guideline states that the entity at group level "has in place appropriate and effective tools, procedures and lines of responsibility and accountability enabling it to oversee and steer the functioning of the risk management and internal control systems at individual level". Art. 246 of the Solvency II Directive requires only "the risk management and internal control systems and reporting procedures shall be implemented consistently". There is no requirement (and often no possibility) to steer the functioning of the risk management system and internal control system. We would propose to align with the wording of the Directive.	
1.96		
1.97	Reference is made to each individual undertaking. It is unclear if refers only to undertakings within the EEA	
1.98		
1.99	This Guideline should be deleted as its content is included in the Guidelines on the Pre-application of internal models (EIOPA-CP-13/11)	
<b>Compliance and Reporting Rules General Comments</b>		
1.100		
1.101	It is stated that NCAs should "amend their legal framework" if this is necessary to comply with the Guidelines. In this regard, we would like to point out that in some Member States those changes	

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	can only be made by the legislator, not by the authority itself. As such, more time may be required.	
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<b>Impact Assessment – General Coments</b>		
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2.15	As referred in the general comments, we believe that some Guidelines are too detailed	
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2.17	As referred in the general comments , the “phasing-in” described in the cover note (1.4, 1.5, 4.3 and 4.6) should be included in the Guidelines.	
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