

**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:	NFU - Nordic Financial Unions	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-13-008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the paragraphs refers to this Consultation Paper, the numbering of cells refers to the Technical Annexes II and III.</p>		
Reference	Comment	Resolution
General Comment	<p>Summary of main points</p> <ul style="list-style-type: none"> ■ Diversity on company boards through employee representation is a key issue for sound and long-term oriented corporate governance ■ Employees should be involved in the governance of a company regardless of its size, and the same principle of course applies to the question of board diversity 	

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

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

- Whistle blowing systems can work to ensure that early warnings reach the competent authority and/or internal body for risk control that has the power, mandate and resources to follow up on the warning

General comments

NFU welcomes the EIOPA Consultation Paper on the Proposal for Guidelines on the System of Governance and the opportunity to comment on them. The problem with weak corporate governance is at the heart of the financial crisis. It is also central for the functioning of the internal market and for long-term oriented businesses and economies. The time is well due for these issues to be addressed forcefully. Diversity on the board of directors is a key issue in sound and long-term oriented corporate governance. NFU fully agrees that high performing, effective boards are needed to challenge executive management, meaning that boards need non-executive members with diverse views, skills, and appropriate professional experience.

The value of employee input in this context cannot be overestimated. Employees have a crucial part to play in corporate governance, either as members of the board or as providers of information to the board. It is of utmost importance that any legislation and/or guidelines in this area takes the employee dimension into account, not least from the perspective of systemic stability. Employees are an asset for any company, providing experience, knowledge and expertise to corporate governance. Creating structures for employee involvement in the management of a company is a win-win measure that benefits all stakeholders.

NFUs response to this consultation paper will mainly argue that employee representation in the undertaking's and group's administrative, management or supervisory body (AMSB) must be ensured and that employee representatives must be seen as significant stakeholders within these bodies. Before arguing why and when this is relevant in each specific case below, we would like to point out the general reasons why employee representatives are important:

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

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

	<p>i) Democracy and justice- employees have a right to be informed and consulted on the governance of the company they are working for, with a view to ensuring work-life democracy</p> <p>ii) the added value to the undertaking's economic performance - employee representatives in management bodies work for the benefit of the undertaking, not least through employees long-term interest in sustainable profit-making ;</p> <p>iii) the added value to the society as a whole, e.g. through the added quality of supervision for example through whistle-blowing systems, and the aim of predictable and sustainable sectors.</p>	
Introduction General Comment		
1.1		
1.2		
1.3	NFU welcomes the EIOPA initiative, aiming at a consistent approach by national supervisors, and avoiding the risk of different national solutions emerging due to the delays of the process. A level playing field is of utmost importance.	
1.4	NFU agrees on the key areas identified by EIOPA on which the preparation for Solvency II should focus. It is important that all the areas of governance, ORSA, pre-application and reporting are covered by the scope of the interim measures, notwithstanding the fact that final capital requirements are still not precisely defined.	
1.5		
1.6	During the interim phase, the SII and SI requirements will to some extent coexist. This will entail a burden for both supervisors and undertakings. Sufficient resources and time for employees to deal with both old and new tasks should be ensured.	
1.7		
1.8		

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
1.9		
1.10		
1.11		
1.12		
Section I. General Comments		
1.13		
1.14		
1.15		
Section II. General Comments		
Chapter I General Comments		
1.16	<p>NFU would like to highlight that employee representation in the AMSB of the undertaking would improve the undertaking's ability to build qualitative information and thereby improve the national competent authorities potential to « challenging that information when necessary », as the Guideline says.</p> <p>NFU believes that board members elected by the employees should be, where applicable, trade union members in order to ensure that the person is supported by an effective network and has links to all employees in all parts of the company. This also has a democratic value : a trade union representative is elected by his/her members and his or her voice is thereby legitimized as the voice of all the employees.</p>	
1.17	As in the Guideline 3. 1.16. NFU would like to highlight that employee representation in the AMSB of the undertaking would most likely improve the undertaking's ability to build qualitative information and thereby improve the national competent authorities potential to « challenging	

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

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

	the decision making both at group and entity level. », as the Guideline says.	
1.18	<p>Connected to Guideline 1. 1.14. in this Consultation Paper, saying that undertakings and groups should take appropriate steps to « build an effective system of governance according to the Solvency II Directive which provides for sound and prudent management », NFU would like to stress the importance of including employee representatives in boards to ensure this when, as Guideline 4. 1.18. wording is, « ensure that the undertaking has organisational and operational structures aimed at supporting the strategic objectives and operations of the undertaking. »</p> <p>As highlighted in the Commission Green Paper on Corporate Governance in financial institutions (2010) “it seems necessary for members of the board of directors to be familiar with the structure of their financial institution and ensure that organisational complexity does not prevent effective control of the institution's activity in its entirety.” In this context, NFU would like to highlight the benefits of the one-tier system for employee board-level representation.</p> <p>The one-tier system, as used in the Nordic countries, provides the company with a valuable asset. The company gets an insight on how different issues are perceived from the employee perspective, and the employees get an overview on what the company is doing and how. An employee board-level representative can provide very valuable insights from a supervision perspective. He/she is not only involved in the decision-making of the company, but also has access to direct information on the situation in the company from the employee perspective. Also, being elected for the board by a different group of people than the rest of the board members, employee representation ensures a bigger versatility of independence in the board. Europe must move away from the short-termism that has caused the crisis, and acknowledge that giving good advice and having excellent customer service is a precondition for the sustainable and long-term success of any financial institution. Board-level representation therefore needs to be strengthened across Europe in order to provide employees with an insight regarding the status of the company. For instance, NFU believes that board members elected by the employees should be trade union members in order to ensure that the person is supported by an effective network and has links to all employees in all parts of the company.</p>	

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
1.19		
1.20		
1.21		
1.22		
1.23		
1.24		
1.25		
1.26		
1.27		
1.28		
1.29		
1.30		
Chapter II General Comments		
1.31	<p>NFU agrees that it is important to « ensure appropriate diversity of qualifications, knowledge and relevant experience to ensure that the undertaking is managed and overseen in a professional manner », as the guideline says.</p> <p>NFU would also like to highlight that <i>appropriate diversity</i> must mean that the irreplaceable position of employee representatives is protected. If the aim is to ensure real diversity of ; i) « qualifications », employee representatives that work or have worked in the undertaking have qualifications in specific areas within the undertaking which will provide the board with relevant but non-typical qualifications; ii) « knowledge », employee representatives on company boards makes sure the company gets an insight on how different issues are perceived from the employee perspective, and the employees get an overview on what the company is doing and how ; iii)</p>	

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

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

« relevant experiences » also calls for employee representatives since they have a unique advantage of having experiences from the floor, so to speak, regarding for example the culture of the undertaking as well as day-to-day practices and procedures.

As highlighted in the Commission Green Paper on Corporate Governance in financial institutions (2010) « it seems necessary for members of the board of directors to be familiar with the structure of their financial institution and ensure that organisational complexity does not prevent effective control of the institution's activity in its entirety. » In this context, NFU would like to highlight the benefits of the one-tier system for employee board-level representation.

The requirement to oversee the undertaking in a professional manner calls for employee representatives on corporate boards. An employee board-level representative can provide very valuable insights from a supervision perspective. He/she is not only involved in the decision-making of the company, but also has access to direct information on the situation in the company from the employee perspective. Also, being elected for the board by a different group of people than the rest of the board members, employee representation ensures a bigger versatility of independence in the board.

Therefore it is crucial that employee representatives *should* be taken into account as a relevant factor by being seen as a natural part of the fit requirements, and not only, as the Explanatory Text states, that « the qualifications and experience of other employees within the undertaking *could* be taken into account as a relevant factor. »

There are examples from the finance sector in Denmark where the wording *diversity* is used as an excuse in company boards to exclude some employee representatives in boards, saying only *one* employee representative is needed to ensure diversity. NFU argues that the employee perspective is crucial for all undertakings, and diversity should therefore not be mistaken for a symbolic value but the fact that participation in boards should mean actual influence.

On the grounds of the above justification NFU suggests the following additional wording for

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
	<p>Guideline 11. 1.31. Changes is written in italics.</p> <p>1.31. In accordance with Article 42 of Solvency II, national competent authorities should ensure that persons who effectively run the undertaking or have other key functions, including members of the administrative, supervisory or management body of the undertaking are fit and take account of the respective duties allocated to individual members to ensure appropriate diversity of qualifications, knowledge and relevant experience to ensure that the undertaking is managed and overseen in a professional manner. <i>Where applicable, employee representation on company boards should be respected and promoted in this regard.</i></p>	
1.32	<p>When it comes to ensuring that directors and board members have suitable skills and qualifications, it is not only a question of a selection process. It is also a matter of training. The board members', including employee board representatives, competencies must be continuously updated to fulfil any requirements that have been deemed appropriate or necessary for the task.</p> <p>With reference to the above, NFU suggests new wordings for Guideline 11. 1.32. Changes is written in italics.</p> <p>1.32. In accordance with Article 42 of Solvency II, national competent authorities should ensure that the undertaking ensures, <i>e.g. through training when needed</i>, that the members of the administrative, management or supervisory body collectively possesses at least qualification, experiences and knowledge about:</p>	
1.33		
1.34		
1.35		
1.36		
Chapter III General Comments		

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
1.37		
1.38		
1.39		
1.40	<p>A risk management policy should not only be established but also published, e.g. in the undertaking's annual report, to support sustainability of their risk strategies. To support sustainability transparency could be an effective tool to make sure employees and customers will have a fair ability to examine the undertaking's activities. From an employee perspective it can help staff to act in coherence with the undertaking's risk strategies, not least through having the ability to show customers the risk profile of the undertaking . From a consumer perspective, risk transparency is a vital component to be able to make an informed investment decision.</p> <p>On the grounds of the above, NFU suggests new wordings for Guideline 16. 1.40. Changes is written in italics.</p> <p>1.40. In accordance with Article 44 of Solvency II, national competent authorities should ensure that the undertaking establishes <i>and makes public via an appropriate channel such as the annual report</i>, a risk management policy which at least :</p> <p>...</p> <p>e) sets out the frequency and content of regular stress tests, and describe the situations that would warrant special stress tests <i>and, to the extent possible, publishes this information and the results of the stress tests.</i></p>	
1.41	<p>Since the undertaking's staff are affected by risks it must be ensured that the risk management function reports risks that have been identified as potentially material. This could be ensured through employee representation in the administrative, management or supervisory body of the undertaking. If employee representation is not established in these bodies, risks that have been identified as potentially material must be reported to the trade union representative or, where applicable, the elected employee representative.</p>	

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
1.42		
1.43		
1.44		
1.45		
1.46		
1.47		
1.48		
1.49		
1.50		
1.51		
Chapter IV General Comments		
1.52		
1.53		
1.54		
1.55	<p>Here, the same principle as in Guideline 17. 1.41. should apply.</p> <p>Since the undertaking's staff are affected by risks it must be ensured that the risk management function reports risks that have been identified as potentially material. This could be ensured through employee representation in the administrative, management or supervisory body of the undertaking. If employee representation is not established in these bodies, risks that have been identified as potentially material must be reported to the trade union representative or, where applicable, the elected employee representative .</p>	

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
1.56		
1.57		
1.58		
1.59		
1.60		
1.61		
1.62		
1.63		
Chapter V General Comments		
1.64		
1.65		
1.66		
Chapter VI General Comments	<p>NFU would like to point to the lack of discussions on whistle-blowing systems in the Consultation paper. Whistle-blowing systems have for example been set up in CRD IV and it is very surprising for NFU that it is not addressed as a key issue in the Internal Control environment or elsewhere in this Consultation paper.</p> <p>NFU would like to stress the importance of looking beyond governmental supervision as the only viable way to go. From the employee perspective, ensuring sound and efficient whistle-blowing systems would be an additional measure to contribute to efficient supervision. Whistle-blowing is about ensuring that early warnings from the bottom and up will reach the competent supervisory authority which should have the power, the mandate and resources to follow-up on the warnings and, where necessary, investigate the entire company.</p>	

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

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

	<p>Whistle-blowing would not only ensure a fast and efficient “point of entry” for national supervisors, but also providing employees with a measure where their concerns are taken seriously. This could be done in a way where the national supervisor consults with employee representatives in a suitable fashion, be it through anonymous “hot-lines” or scheduled, consultative meetings with trade unions. It is important to stress that for employees to be able to provide this information in an orderly fashion, the national supervisors must be able to create reliable systems for this, which are not filtered by a strong director or board of directors.</p> <p>One of the most important aspects of the discussion on establishment of whistle-blowing mechanisms is to ensure proper safe-guards for employees. Employees who choose to exercise their right to “blow the whistle” must be guaranteed anonymity, and there must be no repercussions of any kind for employees who exercise their right to inform supervisory agencies or similar of any types of misconduct in a company.</p>	
1.67		
1.68		
1.69		
Chapter VII General Comments		
1.70		
1.71		
1.72		
1.73		
1.74		
1.75		
1.76		

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
Chapter VIII General Comments		
1.77		
1.78		
1.79		
1.80		
1.81		
1.82		
1.83		
1.84		
1.85		
1.86		
1.87		
Chapter IX General Comments		
1.88		
1.89		
1.90		
1.91		
Section III. General Comments	Since group governance policy and activity affects employees in, at least, an equal manner as every entity's policy and activity it is important that employee representatives are informed, consulted and do participate in the same regulatory framework as the undertakings. Therefore the « Group governance specific requirements » should be coherent with the « System of governance » in	

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
	general.	
1.92		
1.93		
1.94		
1.95		
1.96		
1.97	<p>Here, the same principle as in Guideline 17. 1.41. and Guideline 26. 1.55. should apply.</p> <p>Since the undertaking's staff are affected by risks also at group level it must be ensured that the group risk management function when reporting risks to each individual undertaking also ensures that this information, where applicable, reaches the trade union/employee representatives.</p>	
1.98		
1.99		
Compliance and Reporting Rules General Comments		
1.100		
1.101		
1.102		
1.103		
Impact Assessment – General Comments		
2.1		
2.2		
2.3		

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

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

2.4		
2.5		
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		
2.22		
2.23		
2.24		
2.25		
2.26		
2.27		
2.28		
2.29		

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
2.30		
2.31		
2.32		
2.33		
2.34		
2.35		
2.36		
2.37		
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		
2.54		
2.55		

Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance		Deadline 19 June 2013 12:00 CET
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		
2.70		