

<b>Comments Template on Consultation Paper on on the Proposal for Guidelines on the System of Governance</b>		<b>Deadline 19 June 2013 12:00 CET</b>
Name of Company:	Powszechny Zakład Ubezpieczeń Spółka Akcyjna Powszechny Zakład Ubezpieczeń na Życie Spółka Akcyjna	
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>		
Reference	Comment	Resolution
<b>General Comment</b>	<u>Timeline for the Guidelines Implementation</u>  The time table for guidelines implementation should to greater degree incorporate proportionality principle and should not force implicitly (indirectly) earlier, de facto implementation of Solvency II requirements like calculation of Pillar II requirements at excessively detailed level generating costs that are not justified by the purpose of guidelines. Requirements of „step-by-step” implementation should not be too burdensome and cannot generate costs not	

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	<p>proportionate to the aim of the regulations.</p> <p>Additionally, as we understand, EIOPA intends to publish the guidelines in the areas covered by this consultation in the autumn of this year. According to Article 16(3) of the EIOPA Regulation NCAs 'shall make every effort to comply' with the guidelines. This means in practice, that NCA and insurance undertakings will have limited time of <u>two months</u>, following issuance of the guidelines (the date of issuance of the guidelines is the date on which the guidelines are published in each of the official EU languages) to confirm whether they comply or intend to comply with the guidelines. It is clear that such confirmation should not be automatic but result from a solid analysis of the proposed requirements vis a vis existing capacities (people, IT, infrastructure, budgets) both in NCA and insurance undertakings. And even if in some cases the answer might be positively confirming readiness to comply in other cases, requiring technical preparation, budgets, project, and people, this will not be possible to implement on proposed date. Hence, taking these arguments into account, we have doubt if it is possible for insurance undertakings to prepare for implement the guidelines from 1 January 2014. In our opinion it would be advisable to spend 2014 for local consultations (i.e. based on intensive, technical dialogue between local regulators and local insurance industry) to better prepare for the implementation of the guidelines. Then, it is more realistic that the guidelines could go live starting January 2015.</p> <p>Moreover, as we understand the proposed guidelines, the first report on progress in guidelines implementation is to be submitted to NCA till the end of February 2015 (for year 2014) and the insurance undertakings are not obliged to have implemented all the policies and procedures required by the guidelines as at 1 January 2014. What is required for insurance undertakings, as at 1 January 2014, is to have a detailed plan for guidelines implementation. <b>The question is what is the final date when all requirements resulting from guidelines are to be implemented by insurance undertakings? (Is it the 1 January 2016?). Additionally, is it planned that NCA will provide detailed instructions for guidelines implementation in particular areas and how the process will look like?</b></p> <p><u>Consistency Across Financial Sector Regulators</u></p>	

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There should be greater coordination and harmonization of requirements across financial sector regulators (e.g. the CEBS /EBA guidelines on outsourcing) to avoid any form of regulatory arbitrage, uneven playing field and possible market distortions. One of the possible solutions is clear statement that both EU regulators (EBA, ESMA and EIOPA) have a clear action plan to ensure cross-sector consistence but also at local level NCA should consider ensuring local consistence and harmonization of requirements in the areas covered by the guidelines across entities of the financial sector. For example, in case of outsourcing, in the jurisdictions where key functions cannot be outsourced due to legal limitations (e.g. prohibition on outsourcing of key functions like internal audit or risk management function in another part of financial sector like banks) the guideline is not applicable, but subject to local calibration by NCA. Another possibility is greater and more pronounced wording on proportionality principle. An example of such proportional approach would be allowing greater discretion to undertakings (and local supervisors) in defining specific rules on outsourced function (e.g. pointing out that guideline on outsourcing is only applicable to outsourcing of core insurance activities as defined in local legally binding regulations.

Basis for Guidelines Implementation

We welcome the view, that EIOPA recognises that in a significant number of member states, the NCA does not have the legal competence to enact the relevant financial legislation and is dependent on the powers bestowed upon it. Additionally, special attention should be paid by NCAs to determine how to comply with EIOPA guidelines by incorporating them into their regulatory or supervisory framework in an appropriate manner, especially if they are less stringent or less precise than local legally binding regulations (e.g. in case of outsourcing; fit & proper requirements). Moreover we support the EIOPA view that the guidelines do not require NCAs to take supervisory action, and in our opinion – it should be clearly stated that no such regulatory actions should be taken (e.g. imposing restriction on dividend payment), as a result of a failure by undertakings to comply with Solvency II requirements, including the pillar one, two and/or three requirements.

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	<p><u>Annual Progress report</u></p> <p>In our opinion the annual progress report prepared by local NCA should not be supplemented by any kind of comply or explain procedure (e.g. local peer review report etc.). Such report would require the analysis of compliance of each undertaking with the interim measures requirements. We believe that the compliance should be tested on the basis of final requirements after the official introduction of Solvency II.</p> <p>Key functions</p> <p>During the implementation phase the Solvency I rules are going to be still in force, hence the Solvency II key functions should be treated as complementing (not substituting) the existing Solvency I functions (e.g. actuarial function).</p>	
<b>Introduction General Comment</b>		
1.1		
1.2	<p>The guidelines cover the provisions on the system of governance set out in articles 40 to 49, 93, 132 and 246 of Level 1 Directive:</p> <ul style="list-style-type: none"> <li>- General governance</li> <li>- Fit and proper requirements</li> <li>- Risk management</li> <li>- The prudent person principle</li> <li>- Governance of own funds</li> <li>- Internal controls</li> <li>- Internal audit function</li> <li>- Actuarial function</li> <li>- Outsourcing, and</li> <li>- Group specific governance requirements</li> </ul>	

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	Scope of the guidelines is very wide and burdensome to be implemented. Hence, it is proposed to permanently limit the scope of the guidelines by, for example, excluding 'the prudent person principle' and 'governance of own funds' related points.	
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1.6	Does EIOPA plan to precise if within guidelines implementation reporting period the insurance undertakings have to have already partially implemented procedures and policies required by the guidelines? If Yes, then which procedures and policies will have to be already partially implemented?	
1.7	Does EIOPA plan to precise if within guidelines implementation reporting period the insurance undertakings have to have already partially implemented procedures and policies required by the guidelines? If Yes, then which procedures and policies will have to be already partially implemented?	
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<b>Section I. General Comments</b>		
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1.15	In our opinion the annual progress report prepared by local NCA should not be supplemented by	

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	any kind of comply or explain procedure (e.g. local peer review report etc.). Such report would require the analysis of compliance of each undertaking with the interim measures requirements. We believe that the compliance should be tested on the basis of final requirements after the official introduction of Solvency II.	
<b>Section II. General Comments</b>		
<b>Chapter I General Comments</b>		
1.16		
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1.21	<p>In our opinion there is still a lack of clear division between key functions (especially risk management function and actuarial function). It would be advisable to provide a list of risk management function and actuarial function tasks/responsibilities and in areas where some kind of co-operation between functions is required – to stress which of them provide assistance (and the scope of this assistance) and which takes a lead and bears the final responsibility for the outcome. Such a list might be a useful reference tool, without, on the other hand, being prescriptive, and “one fits all” type of solution.</p> <p>Additionally it is still not clear how are the interaction and concrete tasks of some functions required at group level (e.g. actuarial function).</p> <p>Moreover, in accordance with Articles 44, 46, 47 and 48 of Solvency II, national competent authorities should ensure that the undertaking appropriately implements the following key functions: risk management function, compliance function, internal audit function and actuarial</p>	

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	function. In case of risk management function, internal audit function and actuarial function there are specific guidelines, but there are no such guidelines in case of compliance function. Does EIOPA plan to issue specific guidelines for NCA related to compliance function and its organisation within insurance undertakings?	
1.22	<p>In our opinion there is still a lack of clear division between key functions (especially risk management function and actuarial function). It would be advisable to provide a list of risk management function and actuarial function tasks/responsibilities and in areas where some kind of co-operation between functions is required – to stress which of them provide assistance (and the scope of this assistance) and which takes a lead and bears the final responsibility for the outcome.</p> <p>Additionally it is still not clear how are the interaction and concrete tasks of some functions required at group level (e.g. actuarial function).</p> <p>Moreover, in accordance with Articles 44, 46, 47 and 48 of Solvency II, national competent authorities should ensure that the entity responsible for fulfilling the governance requirements at group level appropriately implements the following key functions: risk management function, compliance function, internal audit function and actuarial function at the level of the group. In case of risk management function, internal audit function and actuarial function there are specific guidelines, but there are no such guidelines in case of compliance function. Does EIOPA plan to issue specific guidelines for NCA related to compliance function and its organisation within insurance undertakings?</p>	
1.23	In our opinion it would be recommended to provide definition or at least examples of ‘significant’ decisions which are to be taken by at least two persons.	
1.24		
1.25	How will NCA ensure that the administrative, management or supervisory body of the undertaking determines the scope and frequency of the internal reviews of the system of governance? Does the EIOPA plan to issue additional guidelines in this area (i.e. on frequency and scope of NCA’s review)? Does EIOPA plan to introduce any other tools for NCA, besides ORSA,	

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	which will help NCA to ensure that requirements related to system of governance are met?	
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1.27		
1.28	<p>In our opinion:</p> <ul style="list-style-type: none"> <li>- Proportionality needs to be applied especially in regard the level of completeness required from documentation.</li> <li>- Guidelines refer to the sub-policies of article 44 (2) (i.e. underwriting and reserving, ALM, investments including derivatives and similar commitments, liquidity and concentration risk management, operational risk management, reinsurance and other risk-mitigation techniques) as well as capital management (article 93) and internal model (IM) change (article 115) which may be excessive during the interim period. Particularly on the policy on model change, it should not be required by the guidelines at this stage and should be further discussed the appropriateness of requiring that before IM can be approved.</li> </ul> <p>Additionally, the guidelines on (d) say: “The policies should clearly set out at least (...) the obligation of the relevant organizational units to inform the risk management, internal audit and the compliance and actuarial functions of <b>any facts</b> relevant for the performance of their duties. “</p> <p>In our opinion a detailed guideline/example should be provided what should be understood under ‘<b>any facts</b> relevant for the performance of their duties ’. E.g. should information on resignation/lay off of head of department or key employee also be passed to risk management, internal audit and the compliance and actuarial functions?</p> <p>Moreover, the guidelines mention only risk management, internal audit and the compliance and actuarial functions ant there is nothing about internal control function. So should also internal control function be informed about ‘any facts relevant for the performance of their duties’?</p>	
1.29		
1.30	<p>In our opinion:</p> <ul style="list-style-type: none"> <li>- Proportionality needs to be applied especially in regard the level of completeness required from</li> </ul>	

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	<p>documentation</p> <p>- Guidelines refer to the sub-policies of article 44 (2) (i.e. underwriting and reserving, ALM, investments including derivatives and similar commitments, liquidity and concentration risk management, operational risk management, reinsurance and other risk-mitigation techniques) as well as capital management (article 93) and internal model (IM) change (article 115) which may be excessive during the interim period. Particularly on the policy on model change, it should not be required by the guidelines at this stage and should be further discussed the appropriateness of requiring that before IM can be approved.</p>	
<b>Chapter II General Comments</b>	<p>According to guidelines, fit &amp; proper requirements are to be met also during transition period. The question is if and how the NCA will examine that fit &amp; proper requirements are met by persons already employed in the insurance undertaking? Additionally, how the process of subsequent check of competences is going to be organised by NCA (e.g. checking the actuarial knowledge and experience of management board members)?</p> <p>In our opinion there should be delegation to local authorities (national option) to define, in line with local laws and regulations what specific criteria should be applied in defining both fit and proper test, especially properness, as this is closely linked to local legal systems (e.g. whether a person who had a court trial but was not convicted in non-financial area like car accidents should be deemed proper). Hence, the wording of the guideline should allow for greater flexibility in the local calibration and wider application of proportionality principle both in case of key persons in the undertaking as well as employees of service or sub service provider.</p>	
1.31	<p>It is not clearly stated how to understand ‘persons who effectively run the undertaking or have <u>other key functions</u>’. In our opinion it should be precised in the guideline. Moreover, issuing of additional guidelines in this area would help insurance undertakings to prepare proper procedures and policies on what requirements are to be met by such persons.</p> <p>Additionally, who will be responsible for identifying ‘persons who effectively run the undertaking or <u>have other key functions</u>’ – undertaking or NCA?</p>	
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1.33	<p>We assume that the requirements (similarly as ‘fit requirements’) relate <u>only</u> to ‘persons who effectively run the undertaking or have other key functions’ and not all undertaking's employees. If yes, than the wording of the guideline should be more precise and clearly define that ‘proper’ does not concern staff which does not run undertaking nor holds key function.</p>	
1.34	<p>Is ‘a policy on the fit and proper requirements’ subject to prior NCA’s approval before going life or it is going to be subject to NAC’s review during inspection? In our opinion it should be clearly stated in the guideline.</p> <p>Additionally, on (a), it is not clearly stated how to understand ‘persons who effectively run the undertaking or have other key functions’. In our opinion it should be precised in the guideline.</p> <p>On (b). We would like to suggest to define precise factors based on which the re-assessment of fit and proper requirements would be triggered.</p> <p>On (c). In our opinion the key-person procedures should only refer to personnel which meet the criteria to be included in the specific group. Personnel not subject to the requirements should be excluded from the procedures.</p>	
1.35	<p>In our opinion it is too ambitious at this stage to require that fit and proper requirements applied to all persons who are employed in the service or sub service provider. Such requirements is clearly not proportional to the goals intended by the Solvency II and being much more demanding than requirements defined by other EU regulators (like EBA guideline on outsourcing), hence creating unlevel playing field between insurance and banking industry. There should be greater coordination and harmonization of outsourcing requirements across financial sector regulators to avoid any form of regulatory arbitrage. One of the possible solutions is clear statement that in jurisdictions where key functions cannot be outsourced due to legal limitations (prohibition on outsourcing of key functions like internal audit or risk management function) the guideline is not applicable. Another possibility is greater and more pronounced wording on proportionality principle. An example of such proportional approach would be allowing greater discretion to undertakings (and local supervisors) in defining specific rules on fit and proper test depending on the scale and nature of outsourced function, where for simple type of outsourcing fit and proper requirements could be applied just to CEO or if needed the board of the service provider or sub service provider.</p>	

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<b>Chapter III General Comments</b>		
1.37	According to point 1.37 the administrative, management or supervisory body is expected to set up the undertaking's risk appetite and overall risk tolerance limits. In our opinion the guidelines should be more precise in terms of how the risk appetite and risk tolerance limits should be defined by the undertaking.	
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1.40	<p>On (a), in explanatory text to the guideline it is stated that „1.80. (...) The undertaking takes steps to verify the appropriateness of external credit assessments as part of their risk management.” In our opinion in many cases it will not be possible (e.g. lack of appropriate data in case of market transactions counterparties) or extremely burdensome for undertakings to provide full verification of external credit assessments. From our point of view, there should be a guideline what should be the scope of undertaking's verification of external credit assessments?</p> <p>On (b) and (d), it would be advisable to provide guideline how the 'relevant' risk categories should be understood. For example, should the relevance of risk category be measured in terms of influence on capital position or earnings of undertakings in case the risk will materialize?</p> <p>On (e), in our opinion the guideline on minimum frequency of running stress tests and minimum number/set of stress tests scenarios should be provided. Moreover the requirement of running stress tests does not arise from Article 44 of Solvency II.</p> <p>Additionally, does EIOPA envision possibility of different frequency and scope of stress tests depending on the size and character of undertaking business and risk position?</p>	
1.41	In this context it would be use full to provide guideline how the concept of 'materiality' should be understood, in other words it should answer such questions as a) whether the materiality is	

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	defined by undertaking or there will be more specific guideline determining the approach to materiality like giving 99.5% confidence level or other indicator, b) it should show what is a difference between 'relevant' as defined in 1.40 b and materiality.	
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1.46	<p>In our opinion the guideline on minimum frequency of running operational risk stress tests scenarios should be provided. Moreover the requirement of running stress tests does not arise from Article 44 of Solvency II.</p> <p>Additionally, does EIOPA envision possibility of different frequency and scope of stress tests depending on the size and character of undertaking business and risk position?</p>	
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1.49	<p>On (c) and (d), in our opinion the guideline on minimum frequency of running stress tests and minimum number/set of stress tests scenarios should be provided. Moreover the requirement of running stress tests does not arise from Article 44 of Solvency II.</p> <p>Additionally, does EIOPA envision possibility of different frequency and scope of stress tests depending on the size and character of undertaking business and risk position?</p>	
1.50	<p>On (e), as we understand this point and based on explanatory text to the guideline („1.111.(...) For such purpose <b>an appropriate number of stress tests are carried out on a regular basis.</b>”) in our opinion the guideline on minimum frequency of running stress tests and minimum number/set of stress tests scenarios should be provided.</p>	

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	Additionally, does EIOPA envision possibility of different frequency and scope of stress tests depending on the size and character of undertaking business and risk position?	
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<b>Chapter IV General Comments</b>		
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<b>Chapter V General Comments</b>		
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1.65	The requirements of development of medium-term capital management plans do not arise from	

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	Article 41 or Article 93 of Solvency II. Moreover if such requirement is considered the definition of “medium-term” period is required.	
1.66	Please refer to point 1.65.	
<b>Chapter VI General Comments</b>		
1.67	In case of risk management function, internal audit function and actuarial function there are specific guidelines, but there are no such guidelines in case of compliance function. Does EIOPA plan to issue specific guidelines for NCA related to compliance function and its organisation within insurance undertakings?	
1.68	In case of risk management function, internal audit function and actuarial function there are specific guidelines, but there are no such guidelines in case of compliance function. Does EIOPA plan to issue specific guidelines for NCA related to compliance function and its organisation within insurance undertakings?	
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<b>Chapter VII General Comments</b>		
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<b>Chapter VIII General Comments</b>	<u>General comment (connection to Pillar I Solvency II requirements)</u>  Guidelines require Pillar I calculations to be carried out reflecting the final Solvency II position. As such, it is proposed that undertakings will have to calculate the balance sheet including technical provisions and determine the capital requirements accordingly with Solvency II Pillar I requirements.  In our opinion, it creates potentially unnecessary costs, ambiguity and uncertainty namely in regard the principles to be used for the reporting of Pillar I elements in case Omnibus II Directive (OMDII) is not agreed by the end of 2013.	
	<u>General comment (scope of tasks of Actuarial Function)</u>  It would be advisable to provide a list of risk management function and actuarial function tasks/responsibilities and in areas where some kind of co-operation between functions is required – to stress which of them provide assistance (and the scope of this assistance) and which takes a lead and bears the final responsibility for the outcome.	
1.77	Does EIOPA plan to issue additional guidelines on potential conflicts of interests, if the undertaking decides to add additional tasks or activities to the tasks and activities of the actuarial function?  Moreover it is important to notice that during the implementation phase the Solvency I rules are going to be still in force, hence the Solvency II key functions should be treated as complementing (not substituting) the existing Solvency I functions (e.g. actuarial function).	
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1.81	The requirement of the stability of internal model does not arise from Article 48 of Solvency II. Moreover in our opinion the key characteristic of the internal model should be a proper	

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	consideration of the undertaking's risk profile rather than the stability of model.	
1.82	In our opinion <u>a concept of 'materiality' (or proportionality principle) should be used when applying data quality standards to calculation of technical provisions.</u> There could be circumstances that obtaining appropriate data for calculation of technical provisions for not material or not bearing high risk/exposure portfolios/contracts would be burdensome and costs of it can be too high in comparison to the benefits of such exercise.	
1.83	<p>In our opinion, presenting explanation of 'any' differences may not be possible or the cost may exceed the benefit. Therefore the actuarial function should be required to present explanation of only 'significant/material' differences amongst the technical provisions for different valuation dates.</p> <p>Additionally, how '(...) any differences amongst the technical provisions for <b>different valuation dates</b> (...) should be understood. From our point of view it is obvious that technical provisions differ in different periods. So what kind of deviations or causes should be explained?</p>	
1.84		
1.85		
1.86	<p>Scope of co-operation between actuarial and risk management functions should be addressed further, in particular where internal model development and maintenance are concerned, since duplication and misalignments should be explicitly discouraged.</p> <p>It would be advisable to clearly state whether the actuarial function assistance is provided after request of risk management function or maybe is initiated in any other way. Moreover, in case of the internal model development it should be clearly stated whether the actuarial function 'assistance' should be understood as only providing opinion or information/data required by risk management function (which, as we understand, is to be responsible for internal model) or risk management function may require actuarial function to be fully involved in design and development of the internal model.</p>	
1.87	In our opinion, identification of 'any' deficiencies may not be possible or the cost may exceed the	

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	benefit. Therefore the actuarial function should be required to identify only 'significant/material' deficiencies and gives recommendations as to how such 'significant/material' deficiencies could be remedied.	
<b>Chapter IX General Comments</b>	There should be greater coordination and harmonization of outsourcing requirements across financial sector regulators (e.g. the CEBS /EBA guidelines on outsourcing) to avoid any form of regulatory arbitrage. One of the possible solutions is clear statement that in jurisdictions where key functions cannot be outsourced due to legal limitations (prohibition on outsourcing of key functions like internal audit or risk management function) the guideline is not applicable. Another possibility is greater and <u>more pronounced wording on proportionality principle</u> . An example of such proportional approach would be allowing greater discretion to undertakings (and local supervisors) in defining specific rules on outsourced function (e.g. pointing out that guidelines on outsourcing is <u>only applicable to outsourcing of core insurance activities</u> as defined in local legally binding regulations.	
1.88	Will the local NCA be obliged to issue additional guidelines specifying directly which agreements should be treated as outsourcing and what requirements they have to meet?	
1.89	Is our understanding correct, that agreements with insurance intermediaries should be treated as outsourcing agreements and be subject to outsourcing requirements stated in the guidelines e.g. be submitted to local NCA, despite insurance intermediaries operate based on local law and are entered into register kept by local NCA?	
1.90		
1.91	<p>On (a), please clarify whether this requirement is expected to apply to new arrangements only or to apply to existing ones as well.</p> <p>On (b), in our opinion it is unclear if outsourcing requirements would be applied to existing contracts. We recommend applying outsourcing requirements to new or renewed contracts.</p> <p>On (c), from current shape of the guideline we understand that this requirement applies to all outsourced functions. In our opinion it should be applicable only to outsourcing of key functions.</p>	

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	Additionally, how it is going to be ensured that the requirements related to outsourcing policy will be in line with the final requirements of Solvency II Directive/OMD when agreed and introduced?	
<b>Section III. General Comments</b>		
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1.99	Does EIOPA plan to precise if within guidelines implementation reporting period the insurance undertakings have to have already partially implemented procedures and policies related to use of internal model? If Yes, then which procedures and policies will have to be already partially implemented?	
<b>Compliance and Reporting Rules General Comments</b>		
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<b>Impact Assessment – General Coments</b>		

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