



EIOPA/13/413
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**EIOPA Final Report
on Public Consultation No. 13/008
on the Proposal for Guidelines on the
System of Governance**

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1. Scope

- 1.1. This Final Report sets out the feedback to the Consultation Paper (CP) No. 13/08, which provides an analysis of responses to the consultation including to the comments made by the Insurance and Reinsurance Stakeholders Group (IRSG), describes any material changes to the CP (or confirms that there have been no material changes), and explains the reasons for this in the light of feedback received.
- 1.2. It includes a feedback statement with EIOPA's opinion on the main comments received during the Public Consultation and the revised Guidelines.

2. Purpose

- 2.1. EIOPA is issuing Guidelines addressed to National Competent Authorities (NCAs) on how they should prepare for the application of Solvency II. The Guidelines follow EIOPA's Opinion on interim measures regarding Solvency II published on the 20 December 2012¹ (hereafter 'the Opinion'), within which EIOPA:
- a) Set out its expectations that NCAs, by way of preparing for the new system, put in place, starting on 1 January 2014, important aspects of the prospective and risk based supervisory approach to be introduced by Solvency II.
 - b) Stressed the importance of a consistent and convergent approach with respect to these preparations, notwithstanding the current status of the negotiations on the Omnibus II Directive (OMDII) and the further delay to the application of Solvency II.
 - c) Committed to publish Guidelines addressed to NCAs on how they should meet the expectations described in the Opinion.
- 2.2. The measures set out in the Guidelines are preparatory for Solvency II. In order to ensure effective and meaningful preparation, there needs to be a defined and demonstrable progression towards it. This means that during the preparatory phase, NCAs are expected to ensure that undertakings take steps towards implementing the relevant aspects of the regulatory framework addressed by these Guidelines. In addition this would also ensure that when Solvency II is applicable in their jurisdiction undertakings are better prepared to fully comply with Solvency II. In turn, NCAs will be expected to take the appropriate steps to promote industry's preparation towards Solvency II and to review and evaluate the quality of the information provided to them.
- 2.3. The package in this Final Report reflects EIOPA's position on the comments received and includes:
- a) Feedback Statement;
 - b) Revised preparatory Guidelines;
 - c) Revised Explanatory Text; and
 - d) Appendixes:
 - Appendix I: Impact Assessment
 - Appendix II: Comments template

¹ <https://eiopa.europa.eu/publications/eiopa-opinions/index.html>

3. Feedback Statement

I. Introduction

- 3.1. EIOPA would like to thank stakeholders and IRSG for having provided comments on CP No. 13/008. These comments provided valuable suggestions for improving the requirements related to governance and helped to identify areas needing further clarification.
- 3.2. The amendments that have been made cover not only clarifications, including the acceptance of a number of rewording suggestions from respondents, but also some changes to the content of the Guidelines.
- 3.3. The feedback statement outlines the comments received from stakeholders to CP No. 13/08 and the responses by EIOPA to those comments along with resulting changes made to the governance package.
- 3.4. For a complete overview of all comments, responses and resulting changes made please refer also to the comments template (Appendix 2: Resolution of comments).

II. Comments in general

- 3.5. Generally stakeholders supported a move towards a harmonised regime. Stakeholders also highlighted that a proliferation of national requirements should be avoided and a consistent approach adopted across all jurisdictions for the preparation of Solvency II was welcomed.
- 3.6. The following paragraphs address the main comments received and EIOPA's answer to those.

Principle based approach and proportionality principle

- 3.7. Stakeholders want to see a 'principles based' approach for the preparatory Guidelines. They believe that the Guidelines ought to be proportionate, focus on overall issues and should avoid granularity and not be lengthy.
- 3.8. The approach taken by EIOPA is that the Guidelines do not describe how the requirements are to be applied on a case by case basis, but that they try to be applicable to all possible examples.
- 3.9. EIOPA aims to ensure that the Guidelines are applied in a manner that is proportionate in the context of the preparatory phase, and allows for some flexibility in application of these Guidelines through provisions for 'phasing-in' (i.e. different expectations for 2014 and 2015) and for the use of thresholds. Since proportionality applies whenever there are different ways to achieve expected outcomes, the Guidelines per nature do not explicitly refer to the principle of proportionality at every opportunity but specific proportionality provisions are included such as materiality thresholds and new recitals in submission of information. As they are generally not setting out how undertakings are supposed to comply with requirements, the Guidelines also do not and cannot give

specific examples of what would be considered proportionate under certain circumstances.

- 3.10. EIOPA expects that NCAs ensure that the provisions described in the Opinion are applied 'in a manner which is proportionate to the nature, scale and complexity inherent in the business of the insurance and reinsurance undertaking'. The approach taken aims to ensure that this expectation can be met, and this is reflected in the drafting of the Guidelines in two principal ways:
- a) In most cases, the Guidelines are principle based or drafted with a view to the outcome and supervisory objective that should be met, taking into account the preparatory nature of Guidelines.
 - b) The scope and level of detail of the Guidelines reflects the fact that the Guidelines are issued in order to prepare for Solvency II and not for full Solvency II application from 1 January 2014. When implementing those Guidelines both NCAs and undertakings will be better prepared for Solvency II.

Purpose of the preparatory phase

- 3.11. Stakeholders questioned whether the purpose of the Guidelines was preparation or early implementation of Solvency II.
- 3.12. EIOPA would like to stress that the measures set out in the Guidelines are preparatory for Solvency II. However, to ensure effective and meaningful preparation, there needs to be a defined and demonstrable progression towards Solvency II by both supervisors and undertakings.
- 3.13. This means that during the preparatory phase, NCAs are expected to ensure that undertakings take active steps towards implementing the relevant aspects of the regulatory framework addressed in these Guidelines, so that when Solvency II is applicable, its requirements can be fully complied with. In turn, NCAs will be expected to take the necessary steps to enable them to review and evaluate the quality of the information provided to them, and to discuss with undertakings the progress being made.
- 3.14. The Guidelines are drafted using the formula "national competent authorities should ensure that" which supports this approach. In fact the Opinion stated that NCAs 'should put in place, starting on 1 January 2014, certain important aspects of the prospective and risk based supervisory approach to be introduced'. It is for NCAs to decide how to integrate the preparatory Guidelines into their regulatory or supervisory frameworks. It is important to emphasise the starting and the expected phasing-in approach here: NCAs and undertakings are expected to progress in their preparedness for Solvency II during the course of the preparatory phase.
- 3.15. Undertakings are expected to achieve the outcomes expected, taking into account the preparatory nature of the Guidelines. EIOPA expects that Guidelines are implemented by NCAs in a way that undertakings' Systems of Governance and processes for Forward Looking Assessment of Own Risks (FLAOR) as well as for Submission of Information are in

place and aligned with the requirements in the preparatory Guidelines. This should allow undertakings to perform the FLAOR during 2014 and 2015, as defined in the respective Guidelines and to submit the information within the framework defined in 2015.

Enforcement measures and supervisory actions

- 3.16. Stakeholders supported that the preparatory phase should enable NCA's to assess preparedness but that it should not lead to any enforcement measures, asking for this clarification to be explicitly dealt with in a Guideline rather than in the introductory text.
- 3.17. EIOPA clarifies that NCAs are expected to comply with the Guidelines by ensuring that undertakings meet the specified outcomes taking into consideration its preparatory nature.
- 3.18. EIOPA Guidelines do not give indications on enforcement measures in relation to the implementation by undertakings of the preparatory Guidelines or in the specific way of implementation itself.
- 3.19. The means by which each NCA incorporates EIOPA Guidelines into their supervisory or regulatory frameworks is left at their discretion and it is not an EIOPA competence. When considering the best appropriate way to incorporate EIOPA Guidelines NCAs may be affected by their competences and powers and specific tools used at national level to incorporate the Guidelines.
- 3.20. Regardless of how NCAs incorporate the Guidelines at national level, EIOPA expects as an active step a dialogue to take place between NCAs and undertakings during the preparatory phase in order to prepare for Solvency II.
- 3.21. The preparatory Guidelines in itself do not require supervisory actions, in particular regarding failures by undertakings to comply with Solvency II Pillar I requirement as a result of the information provided during the preparatory phase.
- 3.22. Nevertheless, the following two examples on supervisory action would be expected:
 - a) It is expected that undertakings take into consideration any information arising from the implementation of the system of governance or from the performance of the FLAOR in the performance of their business or future business planning. It is also expected that a dialogue between NCAs and undertakings would take place, when appropriate. Although the dialogue could take this arising information into consideration, the preparatory Guidelines do not require NCAs to require an increase of capital, if the received information suggests a failure with Solvency II Directive requirements.
 - b) When NCAs receive information on the calculation of the SCR and the determination of Own Funds it is expected that NCAs review the quality of the information received and that they may take supervisory actions if the quality of the information raises concerns.

But it is not expected from the preparatory Guidelines that NCAs would take any supervisory action if the Own Funds are lower than the SCR.

Status of Solvency II Directive and the Delegated Acts (Implementing measures and Technical Standards)

- 3.23. Stakeholders asked for clarifications about the interaction between the preparatory Guidelines and the overall Solvency II negotiation process. They also asked that the associated timing of submission of information and the link to pillar I ought to be spelled out in different scenarios if the Omnibus II Directive has not been agreed or has not progressed sufficiently by the end of 2013.
- 3.24. The Guidelines provide direct references to the corresponding provisions set out in Solvency II Directive. EIOPA acknowledges that certain parts of Solvency II Directive are to be revised by the OMDII and that delegated acts proposal have not yet been finalised by the European Commission yet.
- 3.25. These direct references to Solvency II are made using the expression "In accordance with..." indicating the legal basis of the topic, without prejudice to the current revision of Solvency II Directive by OMDII.
- 3.26. Although the comply-or-explain replies are provided to the preparatory Guidelines only, it is anticipated that during the preparatory phase NCAs and undertakings are preparing for the implementation of all areas covered by Solvency II Directive and not only those covered by the preparatory Guidelines.
- 3.27. EIOPA highlights that the current working assumption for the preparatory Guidelines is that Solvency II will be applicable from 1 January 2016. Under this assumption, starting the preparatory phase from 2015, as requested by some stakeholders, would be too late, especially for the System of Governance including the Forward Looking Assessment of Own Risks and reporting processes.
- 3.28. Final Solvency II Directive requirements will be determined by the OMDII, and the delegated acts. EIOPA is working under the assumption that these measures will be available in time for NCAs and undertakings to prepare for the submission of the forward looking assessment during 2014 and 2015 and the quantitative and qualitative information in 2015. In which case, at that stage, EIOPA would prepare technical specifications on Pillar I quantitative issues, including on the valuation of technical provisions, assets and liabilities other than technical provisions, the SCR and the Underlying Assumptions of the SCR formula and provide guidance on the assumptions underlying the calculation of the standard formula calculation, which reflect the decision on OMDII.
- 3.29. However, as this assumption is based on the current agenda of OMDII negotiations, for the submission of information and the report on the Forward Looking Assessment the submission dates will be reviewed at the end of 2013 based on the latest developments with regard to

Omnibus II. A revision clause will be introduced in the Guidelines accordingly.

Minimum or maximum harmonisation

- 3.30. Stakeholders questioned the extent to which any Guidelines would be 'mandatory' or whether NCAs could go beyond them, i.e. whether 'minimum' or 'maximum' harmonisation is being sought. It is understood that NCAs could choose to go further than any Guidelines issued by EIOPA which, in the view of stakeholders, may not be desirable or practical.
- 3.31. In fact NCAs may have current legislation or regulation that already go beyond the provisions set by the Guidelines and may also do it in future, to the extent that it is consistent with Union law as Solvency II Directive entered into force on the 6 January 2010 (Article 311).

Status of the Explanatory Text

- 3.32. Stakeholders commented on the status of the Explanatory Text. Stakeholders pointed out that the Explanatory Text should not provide a further layer of requirements, as it was not subject to public consultation.
- 3.33. EIOPA would like to clarify that the Explanatory Text is not subject to the comply-or-explain obligation. The aim of the Explanatory Text is to provide illustrations on how Guidelines or certain parts of them can work in practice, adding cross references, concrete applications or examples without creating new obligations that should be complied with. Its content is intended to offer support to the users of the Guidelines and therefore it does not need to be publicly consulted.
- 3.34. In the Explanatory Text, examples of good practices are given, i.e. it shows in more detail on case by case basis examples on how proportionality can be applied, and it presents as well tables in order to help visualise certain structures on an exemplary basis.

Application by third countries

- 3.35. Stakeholder argued that it would be inappropriate any extra-territoriality to be applied on an interim basis. They believe that only EEA undertakings should be subjected, directly or indirectly, to requirements at this stage which require any degree of adaptation to the Solvency II regime.
- 3.36. EIOPA does not expect that supervisory authorities in third countries apply the preparatory Guidelines. The Guidelines are not subject to equivalence analysis nor do they pre-empt any decision taken in past or future by the European Commission regarding equivalence.
- 3.37. In the CP No. 13/010 and in the revised preparatory Guidelines it was clarified that "When the deduction and aggregation method is applied, insurance and reinsurance groups are allowed to use solvency capital requirements and eligible own funds of related third country undertakings

calculated according to their local rules for the purposes of these Guidelines only, and without prejudice to any future European Commission equivalence determinations and any future decisions of group supervisors”, meaning that all third countries would be considered equivalent during the preparatory phase regardless of any equivalence analysis conducted or applied for.

- 3.38. Notwithstanding this, with regard to pillar II requirements as the preparatory System of Governance and the Forward Looking Assessment of Own Risks EIOPA assumes that third country supervisors have similar parts of risk management in their national requirements, as the preparatory Guidelines where these follow international standards.
- 3.39. When referring to group structures or group level the preparatory Guidelines apply to EEA groups only. They do not apply to branches of third country (re)insurance companies set up in the EEA.

Comply-or-explain mechanism

- 3.40. Article 16 of the EIOPA Regulation sets out that NCAs have to report to EIOPA within 2 months from the publication of the Preparatory Guidelines whether they comply or intend to comply with each Guideline. In case NCAs do not comply with a guideline they need to provide an explanation about the reasons for non-compliance. Such obligation is set in Article 16 of the EIOPA Regulation.
- 3.41. The answers on comply-or-explain provided by NCAs will be made publicly available by EIOPA. In the cases of not compliance, the reasons will be kept confidential unless agreed otherwise by the Board of Supervisors.
- 3.42. The NCAs replies provided during the comply-or-explain will be updated later on after the submission of the progress report by NCAs to EIOPA.
- 3.43. 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.
- 3.44. If NCAs don't comply with the Guidelines then, by nature EIOPA expectations on NCAs actions need to be considered accordingly.

Progress report

- 3.45. The progress report is a tool to facilitate communication between EIOPA and the NCAs but it is not part of the requirements for preparation towards Solvency II.
- 3.46. NCAs are required to submit a progress report to EIOPA by the end of February during two years after the application of the Guidelines. The first NCA's progress reports should be submitted by 28 February 2015, based on the period from 1 January 2014 to 31 December 2014.
- 3.47. It is up to the NCAs to decide how the level of detail of the information given to EIOPA in the progress reports and how this information has to be gathered at national level.

III. Specific issues raised by respondents

Decision-making

- 3.48. Guideline 6 about decision-making is almost universally criticised although stakeholders have different concerns. There are also requests for providing a definition for “significant decision”.
- 3.49. EIOPA has carefully drafted this Guideline to be applicable for the different governance structures across the European Union. Some of these structures provide for one person, e.g. a CEO, to represent the undertaking and the intention is not to interfere with those existing national structures. “Persons who effectively run the undertaking” are not limited to the AMSB but may include senior management members. Effective controls, where a decision could potentially seriously affect the undertaking, need to be applied at all levels of the undertaking and even where one person represents an undertaking. There needs to be assurance that there is involvement of somebody with sufficient seniority who can effectively challenge such a decision.
- 3.50. What constitutes a significant decision is addressed in the Explanatory Text (see 1.22). This gives an explanation rather than a definition. In EIOPA’s view this is appropriate to ensure that the undertaking should not apply an approach to the Guideline that is too narrow, but meets the purpose of the requirement.

Fit and proper requirements

- 3.51. Respondents claim that EIOPA goes beyond the requirements of Solvency II Directive in calling for undertakings to apply the fit and proper requirements also to other personnel than the persons explicitly named in Article 42 of Solvency II Directive.
- 3.52. EIOPA acknowledges that the wording of the Guidelines was not sufficiently clear. Therefore, the text is changed to leave no doubts that although the undertaking is as well responsible for ensuring that personnel outside the scope of Article 42 are sufficiently qualified and reliable for the tasks and responsibilities entrusted to them this does not mean that they are subject to the same fit and proper requirements, which apply to persons who effectively run the undertaking or have other key functions.
- 3.53. The outsourcing of key functions is another issue that raises concerns by stakeholders. Requiring all persons performing the outsourced key function at the service provider to be fit and proper was seen as disproportionate and extending beyond the Directive and draft Implementing Measures. It is suggested that the requirements should only apply to the persons who effectively run the service provider or that it should be possible to delegate the responsibility for ensuring that relevant personnel is fit and proper to the service provider via the outsourcing agreement.

- 3.54. The scope of the fit and proper requirements in case of outsourcing of key functions is determined by the Directive. According to Article 42 (1) of Solvency II Directive all persons who have other key functions, i.e. who perform key functions, need to be fit and proper. However, only the person responsible for a key function has to be notified to the supervisory authority². The fit and proper requirement applies regardless of whether the key function is performed by employees of the undertaking or is outsourced to a service provider.
- 3.55. When a key function is outsourced, the undertaking is expected to explicitly address the fit and proper requirements for the persons performing the function at the service provider in the outsourcing agreement. However, it is not sufficient to rely on the contract with the service provider to ensure that requirements are met. Since, according to article 49 (1) of Solvency II Directive, the undertaking cannot delegate responsibility for the compliance with regulatory requirements in case of outsourcing, it has to ascertain that the requirements are observed. That does not necessarily mean that the undertaking itself has to assess whether the relevant personnel employed by the service provider is fit and proper but it has to be part of the general monitoring of the outsourcing agreement.

Key functions

- 3.56. Stakeholders' comments about the role and responsibilities of the key functions are divided. While some stakeholders consider the preparatory Guidelines to be too prescriptive and not sufficiently principles-based, others expect more information about the division of tasks between key functions, in particular the risk management and the actuarial function.
- 3.57. EIOPA underlines that Solvency II Directive generally leaves it to undertakings to organise themselves and to decide on their internal structures. However, the Directive sets out which of the key function is responsible for which tasks and undertakings cannot deviate from this distribution of tasks. EIOPA has clarified and specified some of these requirements but has not drafted additional requirements, i.e. everything that respondents consider to be too prescriptive is already mandatory on account of Solvency II Directive and cannot be changed by EIOPA.
- 3.58. In order not to restrict undertaking's discretion in organising themselves EIOPA does not intend to elaborate further on the division of tasks and cooperation between the key functions. It is up to the undertakings to justify their organisational decisions and demonstrate how these structures do not conflict with the requirement. The requirements include appropriate segregation of responsibilities and the general principles underlying the decision of the Directive that certain tasks shall be carried out by a specific key function.

Risk management

- 3.59. The chapter on risk management is generally considered to be too prescriptive and detailed by stakeholders who especially object to the content of the risk management policy. Several respondents claim that

² Notification is not part of the Preparatory Guidelines but is required by Article 42(2) of Solvency II Directive.

the Guidelines introduce new requirements as compared to Solvency II Directive and draft Implementing Measures.

- 3.60. EIOPA believes the section is sufficiently principles based. The Guidelines generally do not prescribe how undertakings should manage their risks, but just mention obvious issues to be considered or the most basic tools and methods to be employed. EIOPA believes that the Guidelines comprise risk management standards which are considered to be matter-of-course and wide spread practices.
- 3.61. The Guidelines specify the Directive requirements but do not add any new requirement. In reviewing the Guideline EIOPA has assured again that the Guidelines do not go beyond Solvency II Directive. However, EIOPA has clarified the connection with Solvency II Directive in the Resolution Template.
- 3.62. Stakeholders also see the requirement for undertakings to have sub-policies of the risk management policy in place as disproportionate during the preparatory phase. The required regular stress-testing is another issue that respondents object to. Some stakeholders have pointed out that there should be no additional stress testing required on top of stress testing for solvency and capital needs in the framework of the ORSA.
- 3.63. EIOPA underlines that undertakings need to have all sub-policies in place at the start of Solvency II which implies that they should use the preparatory phase to draft these sub-policies and implement them step-by-step during this phase. Please refer to the general comments above on the purpose of the preparatory phase.
- 3.64. Stress tests and scenario analyses do in EIOPA's view not only help to establish solvency and capital needs but also to determine how exposed the undertaking is to certain risks. The Guidelines on the risk management policy only require the undertaking to consider the frequency and content of regular stress tests and the trigger for ad-hoc stress tests. It is up to the undertaking to decide how much stress testing is appropriate

Operational risk

- 3.65. Regarding operational risk respondents object to the requirement to set risk tolerance limits, claiming that such limits are difficult to set for operational risk and therefore unsuitable. Most stakeholders further oppose the implementation of a system for collecting and monitoring operational risk events with the argument that this is disproportionate for small undertakings and goes beyond Solvency II Directive and draft Implementing Measures requirements.
- 3.66. EIOPA underlines that undertakings are required by Article 44 of Solvency II Directive to identify, measure, monitor, manage and report all risks to which they are or could be exposed. While EIOPA acknowledges that assessing operational risk is not an easy task, undertakings still need to address operational risk and to determine what measures they need to take to reduce and mitigate operational risk to an acceptable and proportionate level.

- 3.67. From that requirement of the Directive also follows the need to systematically collect and monitor operational risk events. Guideline 19 in no way implies that this necessarily requires that undertakings implement an electronic data base for operational risks. Undertakings can choose whatever approach is seen as appropriate by them taking into account the proportionality principle.

Prudent Person Principle

- 3.68. Stakeholders oppose the inclusion of the prudent person principle in the preparatory Guidelines claiming that it is not part of the system of governance requirements and introduces Pillar I requirements into the preparatory phase. Putting additional constraints on top of the existing investment regime was seen as impractical.
- 3.69. EIOPA does not agree that the prudent person principle is only part of the quantitative requirements of Pillar I and therefore does not belong to the system of governance requirements. There is a clear connection in Article 44(3) of Solvency II Directive to the prudent person principle which is qualitative not quantitative in nature. The undertaking's investment risk management has to comply with the prudent person principle.
- 3.70. As the investment risk management of undertakings is to be fully compliant with the prudent person principle at the start of Solvency II, undertakings have to consider during the preparatory phase what changes they need to introduce into their existing portfolio of assets to make the transition to a portfolio that is appropriate according to Solvency II requirements. This implies that undertakings are expected to take into account the Solvency II implications of investment decisions. Solvency I and Solvency II may lead to different decisions in some cases, which is the reason why the potential Solvency II impact of a decision under the current regime cannot be disregarded in the decision-making process during the preparatory phase.
- 3.71. Among the most opposed requirements under the prudent person principle is the development of an own set of key risk indicators by the undertaking and the requirement not to solely depend on the information provided by other financial institutions, asset managers and rating agencies (see Guideline 25). For some stakeholders the requirement for key risk indicators would be more appropriate as a general requirement over any material risks while others reject key risk indicators as outside the scope of the prudent person requirements.
- 3.72. In EIOPA's view Guideline 25 specifies the requirement of Article 132 of Solvency II Directive that undertakings are only allowed to invest in assets and take on board risks the undertaking can properly identify, measure, monitor, manage, control and report. Key risk indicators are an important monitoring tool that helps to ensure that undertakings are able to be compliant with this requirement.
- 3.73. In addition EIOPA believes that a second opinion on investment risk challenging the views of financial institutions, asset managers and rating agencies would increase overall risk management. Therefore, proper monitoring and controlling of assets and investments requires that the undertaking does not blindly trust such information but also establishes

sufficient expertise to form its own assessments. Guideline 25 does not imply that all undertakings should have rating agency expertise in-house. Rather undertakings should develop an approach that is proportionate taking into account the risks in their investments.

Governance of own funds

- 3.74. With regard to the governance of own funds stakeholders claim that there is no direct link between these Guidelines and Article 41 of Solvency II Directive and that a capital management policy is neither required by Solvency II Directive nor the draft Implementing Measures. Some stakeholders are of the opinion that this policy should be covered by the ORSA. For the preparatory phase the majority of stakeholders want to see Guidelines 31 and 32 to be deleted.
- 3.75. EIOPA believes that both the governance requirements of Article 41 and the own funds requirements of Article 93 are relevant Solvency II Directive text. The point is that in order to comply with these requirements in the future there will need to be adequate governance over own funds and capital management. More generally, sound and prudent management of an undertaking subject to the Solvency II regime inter alia calls for a capital management policy setting out the procedures necessary to properly attend to the question of eligibility of own funds as well as a capital management plan. This plan should cover the business planning period and should ensure that the undertaking takes active steps towards providing for an adequate level of eligible own funds at any time.
- 3.76. Under the current Solvency I based system, some stakeholders seem to consider that the quality of own funds is not an important issue as it will be under the Solvency II regime and that Solvency I own funds require less monitoring by comparison. EIOPA is concerned that undertakings in preparing for the new regime may not therefore give enough attention to what processes and procedures are necessary to ensure the eligibility of own funds unless the topic is explicitly addressed in the preparatory Guidelines. Moreover, Guidelines 31 and 32 should be understood from a dynamic perspective. Hence, the governance of current own funds would need to increase the closer the Solvency II regime comes and to reflect the more complex own funds structure under Solvency II. This is fully in line with the future-oriented approach of the preparatory Guidelines. (Please also see the general comments above 'Purpose of the preparatory phase').
- 3.77. While EIOPA acknowledges that, with regard to the topic of capital management, it can be argued that the relevant Guidelines may perhaps be better placed in the Guidelines on the Forward-looking assessment of own risks, EIOPA considers policies and plans in general to be System of governance issues.

Compliance Function

- 3.78. A number of stakeholders express the view that the Guidelines do not sufficiently address the compliance function and request that EIOPA

should clarify the tasks and responsibilities of this key function during the preparatory phase.

- 3.79. EIOPA considers the Directive text to be sufficiently explicit on the compliance function's role. It is also clear what relevant input the function could provide during the preparatory phase. In particular, the compliance function will have an important role in ensuring that the preparatory measures taken by the undertaking are suitable for enabling it to be fully compliant with all requirements at the start of Solvency II.
- 3.80. Accordingly, in line with its general reticence about giving guidance as to how certain outcomes are to be achieved, EIOPA will leave it to the undertaking itself to decide on best way to organise the compliance function and its responsibilities.

Internal audit policy

- 3.81. Stakeholders question whether the whistle-blowing to the supervisory authority and staff rotation should be required of the internal audit function (see Guideline 36). The objection is not only that there is no legal basis for either of these demands in Solvency II Directive and draft Implementing Measures, but also that some stakeholders consider that whistle-blowing and staff rotation would actually have a detrimental effect.
- 3.82. EIOPA has clarified that both issues should be considered for establishing the internal audit policy, bearing in mind proportionality, but that no mandatory whistle-blowing to the NCA or staff rotation requirement is intended.
- 3.83. However, EIOPA does not share stakeholders' view that these measures normally would have negative effects. Whistle-blowing to the NCA can be a suitable escalation measure where the internal audit function has identified major deficiencies that the AMSB fails to address appropriately. This does not affect the distribution of responsibilities between the internal audit function which reports its findings to the AMSB and the AMSB which decides what to do about them. But it could improve the governance of the undertaking if the AMSB knows that any decision not to act on major findings of the internal audit function could come to the attention of the NCA concerned.
- 3.84. Provided that the number of staff members in the internal audit function has a size that allows rotation to take place, changing responsibilities after a number of years can have a positive effect by increasing objectivity and avoiding potential conflicts of interest. However, this advantage has to be weighed against the need to develop and maintain specialist knowledge in the internal audit function and may make it inexpedient to rotate all staff.

Actuarial Function

- 3.85. Several stakeholders argue that the tasks of the actuarial function are only relevant for the submission of preparatory information to the NCA as there is no framework for the valuation of technical provisions during the preparatory phase due to the status of OMDII negotiations. They request

that for this reason there should be fewer requirements regarding data quality, testing against experience and reporting to the AMSB.

- 3.86. The section about the actuarial function has been reviewed very carefully following the consultation and EIOPA introduces important changes on account of comments received. However, undertakings should not underestimate the work required to get the actuarial function ready for Solvency II during the preparatory phase. This is not limited to helping with the submission of information to the NCA. Undertakings need to take the necessary steps to ensure that they can apply the Solvency II valuation framework correctly as soon as Solvency II Directive applies in their jurisdiction. This is where the actuarial function has an important role. Waiting for the final framework to emerge before it effectively applies, carries the risk that the undertaking lacks sufficient time to prepare and to implement necessary internal steps and procedures.
- 3.87. Also the AMSB should not only concern itself with potential problems in the valuation of technical provisions once the requirements are applicable, but should be informed about the outcome of various tasks as appropriate in order to be able to react if necessary. Hence, already introducing internal reporting requirements on the technical provisions during the preparatory phase is seen by EIOPA as an appropriate step of preparation towards Solvency II.

Outsourcing of underwriting

- 3.88. There is stakeholders' uncertainty with regard to the applicability of Guideline 49 to activities subject to Insurance Mediation Directive (IMD). The stakeholders are of the view that outsourcing requirements can only govern activities not covered by Insurance Mediation Directive (IMD).
- 3.89. EIOPA underlines that Guideline 49 aims to clarify that activities captured by the IMD can still fall under the outsourcing requirements where these activities meet the definition of outsourcing. Underwriting falls under that definition if the person mandated with the underwriting is not an employee and acts on behalf and on account of the undertaking, i.e. makes the final decision about the underwriting.

Scope of outsourcing

- 3.90. Some stakeholders want EIOPA to limit the scope of the outsourcing requirements. They consider the scope as too wide generally or want it stressed that the outsourcing requirements only apply to critical or important activities of key functions or alternatively to critical or important functions and (re)insurance-specific activities. Respondents also ask EIOPA to clarify whether the outsourcing requirements are applicable during the preparatory phase.
- 3.91. EIOPA has amended the title of Guideline 48 towards critical or important activities. Outsourcing is defined by Solvency II Directive (Article 13. (28)) and EIOPA cannot deviate from that – fairly wide – definition. The Guidelines are based on Article 49(2) of Solvency II Directive. The requirements set out there apply to critical or important operational functions or activities. The latter – in accordance with Article 49(2) - do not have to be insurance-specific.

- 3.92. All outsourcing arrangements concerning critical or important functions and activities have to be compliant with the aforementioned specific outsourcing requirements when Solvency II starts. This includes existing outsourcing arrangements as Solvency II Directive does not have any grandfathering clause on this. Therefore undertakings are expected to use the preparatory phase to bring those arrangements in line with these requirements.

Group specific part

Group level AMSB and individual AMSB interaction

- 3.93. Many comments raise the issue that the respective roles of the Group AMSB and the AMSBs of undertakings in the group may be inconsistent and also asked some clarification about how the group AMSB and the AMSB of individual undertakings interact.
- 3.94. EIOPA considers that the role and responsibilities of the AMSB of an undertaking is not diminished because this undertaking is part of a group. Nevertheless, the AMSB of the responsible entity has the same type of role and responsibilities at the level of the group. It is very important that the AMSB of the responsible entity is in a situation to challenge the decisions of the AMSB of a related undertaking when these decisions have a material impact on the group (see Guideline 3). It is also important that the AMSB of the group does not impair the responsibilities of the AMSB of the related undertaking when setting up its own system of governance (see Guideline 53).

Group key functions and individual key functions interaction

- 3.95. Many stakeholder comments raise the issue that the respective roles of the group key functions and the key functions of related undertakings may be inconsistent, in particular for the actuarial function as the technical provisions are calculated at individually entity level. Stakeholders also ask for clarification about how the key functions at the level of the group and at the level of individual undertakings interact.
- 3.96. EIOPA considers that the role and responsibilities of the key functions of an undertaking are not diminished because this undertaking is part of a group. Nevertheless, the key functions of the individual entities within the group have the same role and responsibilities as the key functions at the level of the group.
- 3.97. It is important to consider that a key function of a group could also serve as a key function of an undertaking of a group and vice versa, these functions do not necessarily need to be separated. For example, the risk management of the undertaking may be a part of the risk management of the group. That is why EIOPA does not consider that there is an inconsistency in saying that the group actuarial function is coordinating the calculation of technical provision at the level of the group, while at the same time there is at the level of the individual undertaking an actuarial function in charge of coordination of the calculation of the undertaking's technical provisions.

Jurisdiction over the groups

- 3.98. Many stakeholder comments raise the issue that it is not possible to have requirements on groups as there is no jurisdiction over groups.
- 3.99. EIOPA acknowledges the fact that in the Solvency I regime, apart from adjusted solvency margin calculation for groups and intra-group transactions, only the Helsinki protocol applies. Regardless of this fact, it is possible for EIOPA to issue Guidelines on the matter of group governance as a preparatory exercise for Solvency II. It is also possible because, as a result of the Helsinki protocol, Coordination Committees, which are now named colleges, are in place for European groups.
- 3.100. In each group there is an entity responsible for the fulfilment of the governance requirements at group level, the rules to be applied for the group will be defined by the jurisdiction where this entity is located.

IV. Comments from Insurance and Reinsurance Stakeholders' Group (IRSG)

- 3.101. IRSG generally supports EIOPA's decision to provide preparatory Guidelines on the system of governance.
- 3.102. As mentioned in the IRSG Activity Report 2011 – 2013, in spring 2012 EIOPA shared a previous version of first draft Guidelines on the System of Governance, on which these preparatory Guidelines are based, with members of the IRSG in their personal capacity. The IRSG subgroup Governance discussed those draft Guidelines and gave informal feedback by mid-2012.
- 3.103. An on-going constructive dialogue continues between the IRSG subgroup and the corresponding EIOPA staff member, which lead to a substantially positive opinion by the IRSG on the consultation on those preparatory Guidelines.
- 3.104. EIOPA would like to thank IRSG for the constructive and effective cooperation during the public consultation.
- 3.105. Many issues, which IRSG raises in the public consultation, are already reflected upon in this Final Report. Please see the general comments and the specific comments above.

Inconsistencies with EBA Guidelines

- 3.106. According to IRSG any differences between the Guidelines and corresponding texts by EBA should be justified or otherwise be eliminated.
- 3.107. EIOPA is fully aware of differences between the Guidelines (and corresponding Solvency II Directive) and governance texts by EBA (and the corresponding Directives for credit institutions and investment firms). However, EIOPA has to follow the terminology of Solvency II Directive as this Directive is the basis of the preparatory Guidelines. Therefore if the terminology used in Solvency II Directive deviates from the relevant Directives and regulations in the banking sector it is for the EU Commission to address and align Directives and regulations as appropriate.

Reporting by the AMSB and internal review of the system of governance

- 3.108. Since the Guidelines are silent on the subject of reporting by the AMSB, IRSG proposes that EIOPA should include an additional paragraph in Guideline 4 that requires that the AMSB reports at least annually on the discharge of its functions both publicly and to specifically interested classes of stakeholders.
- 3.109. In addition IRSG proposes that reporting of the scope, findings and conclusions of the review of the system of governance should not be limited to the AMSB of the undertaking but should be extended to specifically interested classes of public stakeholders as appropriate.
- 3.110. The reason the Guidelines are silent on reporting by the AMSB is that Solvency II Directive does not provide for corporate governance requirements. The Directive only deals with internal governance. Therefore, there is no basis for requiring the AMSB to report externally on how the AMSB has discharged its duties. Accordingly, while EIOPA does not deny that it might have a beneficial effect if AMSBs were to take responsibility for their actions and omissions in this way; such a requirement is seen as outside the scope of the preparatory Guidelines for Solvency II.
- 3.111. EIOPA would like to point out that the Solvency and Financial Condition Report based on Article 51 of Solvency II Directive includes information on the system of governance.

Conflicts of interest

- 3.112. Acknowledging the importance of effective management of conflicts of interest IRSG suggests an amendment to Guideline 9 according to which procedures are to be established and communicated by the undertaking for the identification and management of potential conflicts of interest in relation to governance.
- 3.113. Potential conflicts of interest lie at the root of the requirement to ensure an appropriate segregation of duties according to Article 41(1) of Solvency II Directive. So undertakings already have to identify (potential) conflicts of interest and to avoid them or manage the conflicts of interest sufficiently if such recognized conflicts do not lead to the decision to segregate the different tasks. Accordingly, the preparatory Guidelines do not repeat the requirement of the Directive. Although Solvency II Directive covers public disclosure requirements through Article 51 on the Solvency and Financial Condition Report, which will include information on the system of governance, these public disclosure requirements are outside the scope of the preparatory Guidelines. As far as communication of the identification and management of potential conflicts of interest to the NCA is concerned, the NCA can ask an undertaking at any time on how it addresses the issue.

Key functions

- 3.114. IRSG suggests that, according to the principle of proportionality, small and medium-sized undertakings should be explicitly allowed to have one

individual performing more than one key function. The only exemption from this would be the internal audit function.

- 3.115. EIOPA would like to stress that proportionality is an underlying principle to all Guidelines, which is always linked to the nature, scale and complexity of the risks to which an undertaking is or may be exposed. The size of an undertaking alone can never be a reason to accept simpler solutions for the implementation of requirements. However, EIOPA does agree that for key functions other than the internal audit function smaller and less complex undertakings could be allowed to allocate more than one key function to one person. EIOPA would like to stress the fact that possible conflicts of interest need to be addressed accordingly.

Fit and proper for persons who effectively run the undertaking or have other key functions

- 3.116. With regard to the fitness requirements IRSG proposes that Guideline 11 should include the consideration at the adequacy of training arrangements in support of diversity.
- 3.117. In addition IRSG is concerned about the use of the term "personal behaviour" in Guideline 12 on the proper requirements which is seen as potentially too open-ended and suggests that it should be deleted or at least changed to "personal conduct".
- 3.118. EIOPA considers the terms "personal behaviour" and "personal conduct" to be interchangeable. Neither of the terms allows taking into account what a person does in their private sphere. Personal conduct is only relevant in so far as it reflects on whether the person presents an unacceptable moral hazard as a person having a key function in the undertaking.
- 3.119. Undertakings are required by Article 42 of Solvency II Directive to ensure that persons who effectively run the undertaking or have other key functions are continuously fit and proper. This includes, where necessary, that the persons concerned receive the training to keep their qualifications up to the required level. In EIOPA's view adding the point to Guideline 11 as requested by IRSG does not enhance the clarity nor promote a better understanding of the Guideline. In addition, training as an issue for undertakings may have a longer time horizon than Solvency II. For this reason, EIOPA did not consider it appropriate to include this subject in the preparatory Guidelines.

Risk Management

- 3.120. In Guideline 18 on underwriting and reserving risk IRSG suggests a reference to risk aggregation be added.
- 3.121. In addition IRSG considers paragraph 1.45 of Guideline 19 on operational risk to extend beyond the requirements of Article 44 of Solvency II Directive and proposes that it be either justified or deleted.
- 3.122. As a further request IRSG asks for Guideline 21 e) that the intention of that subparagraph is clarified in the Explanatory Text. IRSG does not understand why the importance of adherence to originally communicated aims for unit-linked funds is specifically mentioned in the context of

reinsurance or risk mitigation although it is not limited to the use of these tools.

- 3.123. According to Article 44 (1) of Solvency II Directive undertakings already have to take into account the risks of aggregation on an individual as well as on an aggregated level.
- 3.124. According to Article 44(1) of Solvency II Directive undertakings need to have in place strategies, processes and reporting procedures necessary to monitor, manage and report on the risks to which they are or could be exposed to. This includes operational risks. In EIOPA's view these requirements will be met, when identifying all operational risks that have crystallized and their near misses.

Prudent Person Principle

- 3.125. IRSG requests that the preparatory Guidelines addressing derivatives be consolidated.
- 3.126. For Guideline 30 IRSG suggests that in line with the Explanatory Text sponsors' interests should also be taken into account in the wording of the Guideline.
- 3.127. Merging the Guidelines on derivatives is not possible as all paragraphs carry different and important messages. The aim of these Guidelines is not to specify the purpose(s) of the use of derivatives. Rather it is to require that undertakings actually show that in accordance with Article 132 (4) of Solvency II Directive the use of derivatives has actually served the purposes for which they were intended.
- 3.128. EIOPA has further added the word "sponsor" to the Guideline as proposed by IRSG to provide consistency between the Guideline and the Explanatory Text.

Governance of own funds

- 3.129. IRSG does not object to the fact that two Guidelines on the governance of own funds are included in the preparatory Guidelines but points out that both Guidelines may require clarification that no detailed own funds requirements have been implemented.
- 3.130. While further specifications of the own funds requirements are expected from the Implementing Measures and Technical Standards, Solvency II Directive already provides important information about own funds requirements. Undertakings are expected to take first steps to comply with these requirements during the preparatory phase. Without further specifications undertakings may not be in a position to determine whether current own funds all meet future own funds requirements. Although full compliance with future requirements is not the aim of the preparatory Guidelines, undertakings should already consider to what extent they may need contingency plans when the detailed own funds requirements will be established.

Internal controls

- 3.131. Concerning Guideline 34 on monitoring and reporting IRSG agrees with the Guideline in principle but considers the wording to be too general to

be verifiable. In addition IRSG is of the opinion that the point made is already sufficiently covered by Guidelines 6 and 7.

- 3.132. While the Guideline 34 does not mention this explicitly, the monitoring and reporting mechanisms established as part of the internal control system are to be documented. Additionally, the documentation of decisions taken by the AMSB (Guideline 7) would be expected to show that information from the internal control system has been taken into account. Guidelines 6 and 7 both address decision-taking at the level of the AMSB but do not cover the same issues as Guideline 34. Guideline 6 does not concern the information basis for decision-taking at all, but relates to any significant decision regardless of the topic. Guideline 7 refers to the input from the risk management system only.

Internal audit

- 3.133. IRSG is of the view that there should be procedures for the escalation of internal audit findings and the Group would usually expect this escalation to take place via an independent audit committee. In this context the IRSG asks for an explanation of the rationale and intention behind the part of the internal audit policy dealing with internal rules setting out the procedures, which the person responsible for the internal audit function needs to follow before informing the supervisory authority.
- 3.134. Through changes in the wording of the Guideline EIOPA has expressed more clearly that it expects undertakings to consider allowing and providing procedures for whistle-blowing to the NCA as an escalation measures where the AMSB fails to respond to the identification of material deficiencies. EIOPA considers such a measure to be potentially beneficial as it could incentivize the AMSB to react to serious problems in a timely manner. Please see above the section on 'Internal audit policy', too.

Actuarial Function

- 3.135. With regard to the actuarial function IRSG considers Guideline 42 on valuation models of technical provisions to lack a relation to Article 48 of Solvency II Directive and to be unclear in its intent.
- 3.136. IRSG further asks for the deletion of Guideline 40 on the grounds that a combination of calculation and validation tasks in the actuarial function does not result in conflicts of interest.
- 3.137. Concerning Guideline 43 on data quality IRSG suggests that the second paragraph either should be more clearly worded – and makes a specific drafting proposal – or deleted.
- 3.138. The main responsibilities of the actuarial function revolve around the coordination of the calculation of the technical provisions. This coordination tasks includes the responsibility for valuation models. As the Guideline is more about what the actuarial function has to take into account in performing the task, EIOPA acknowledges that the Guideline may be more appropriately placed in the future Guidelines on the valuation of technical provisions. Accordingly, EIOPA has removed this part of the Guideline from the preparatory Guidelines. However, one of the purposes of the Guideline is to ensure that the actuarial function does

not employ valuation models with the intention to inappropriately “smooth” the valuation of technical provisions.

- 3.139. Guideline 40 has a wider application than the combination of the validation of the technical provisions with the task of calculating them. However, EIOPA disagrees that there seems to be no potential conflict of interests between those two tasks. Hence, an undertaking should avoid a combination of these tasks where possible, or address any potential conflict of interest where such tasks are being combined, to ensure that the methodology employed is completely validated independently otherwise.
- 3.140. EIOPA has taken up the suggestion to clarify the wording of the former paragraph 1.83, if not according to the specific drafting proposal of IRSG, and has moved the paragraph from Guideline 43 to Guideline 41 on the coordination of the calculation of technical provisions.

Outsourcing

- 3.141. With respect to Guideline 48 on critical or important operational functions IRSG asks for clarification on whether it follows from the Guideline that some sort of contingency planning in case of a breakdown of critical or important outsourced functions is required.
- 3.142. In Guideline 48 EIOPA clarifies how undertakings should determine whether an operational function or activity is critical or important and thus subject to specific outsourcing requirements. Contingency planning in case that critical or important functions or activities, outsourced or not, suffer disruption may be expected, however, this does not follow from Guideline 48 specifically. Rather it will be a consequence of Articles 41(4) of Solvency II Directive. As the undertaking remains fully responsible for the critical or important outsourced operational function or activity it has to include this in its contingency planning.

Terminology

- 3.143. In respect of the Impact Assessment, IRSG supports EIOPA’s decision not to define the terms risk tolerance and risk appetite. It suggests that EIOPA should consider using similar language as is used in the banking sector where the explanation of these terms includes the note that the terms are used interchangeably.
- 3.144. At the moment there are different interpretations of the terms risk tolerance and risk appetite leading to different definitions and EIOPA at this point in time does not want prescribe and pre-empt the outcome by a specific Guideline or binding certain definition. Building blocks of what should be considered when determining risk tolerance limits and risk appetite have been provided for in the Explanatory Text.

Notification of appointment for a key function

- 3.145. Further regarding the Impact Assessment, IRSG agrees with the approach of EIOPA in not prescribing how persons with key functions should be notified to the NCA during the preparatory phase. However, IRSG points out that there are potential risks arising from a subjective or

inconsistent interpretation by both undertakings and NCAs which could pose a systemic risk for the sector.

- 3.146. EIOPA would like to point out that while it does not expect NCAs to conform to a prescribed form for the notification of key function holders, this does not mean that there is no common understanding as to what NCAs have to consider in their assessments. As in other areas EIOPA seeks convergence among NCAs in the assessments within the nature of Guidelines subject to Comply-or-Explain.

4. Revised Guidelines

Introduction

- 4.1. According to Article 16 of Regulation (EU) 1094/2010 of 24 November 2010 (hereafter, EIOPA Regulation or the Regulation)³ EIOPA is issuing Guidelines addressed to national competent authorities (NCAs) on how to proceed in the preparatory phase leading up to the applications of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II Directive)⁴.
- 4.2. These Guidelines are based on Articles 40 to 49, Article 93, Article 132 and Article 246 of Solvency II Directive.
- 4.3. In the absence of preparatory Guidelines, European national competent authorities may see the need to develop national solutions in order to ensure sound risk sensitive supervision. Instead of reaching consistent and convergent supervision in the EU, different national solutions may emerge to the detriment of a good functioning internal market.
- 4.4. It is of key importance that there will be a consistent and convergent approach with respect to the preparation of Solvency II. These Guidelines should be seen as preparatory work for Solvency II by fostering preparation with respect to key areas of Solvency II in order to ensure proper management of undertakings and to ensure that supervisors have sufficient information at hand. These areas are the system of governance, including risk management system and a forward looking assessment of the undertaking's own risks (based on the Own Risk and Solvency Assessment principles, known as ORSA), pre-application for internal models, and submission of information to national competent authorities.
- 4.5. Early preparation is key in order to ensure that when Solvency II is fully applicable undertakings and national competent authorities will be well prepared and able to apply the new system. For this, national competent authorities are expected to engage with undertakings in a close dialogue.
- 4.6. As part of the preparation for the implementation of Solvency II, national competent authorities should put in place from 1 January 2014 the Guidelines as set out in this document so that insurance and reinsurance undertakings take the appropriate steps to full implementation of Solvency II.

³ OJ L 331, 15.12.2010, p. 48–83

⁴ OJ L 335, 17.12.2009, p.1-155

- 4.7. National competent authorities should send to EIOPA, a progress report on the application of these Guidelines by the end of February following each relevant year, the first being by 28 February 2015 based on the period 1 January 2014 to 31 December 2014.
- 4.8. These Guidelines include Guidelines on the prudent person principle. National competent authorities are expected to ensure that undertakings during the preparatory period already take into account this principle on top of the system of regulatory quantitative limits applicable under the current supervisory regime. In addition national competent authorities are expected to ensure that progress is made by undertakings to make the necessary transition over the duration of the interim period towards having all the requisite governance surrounding investments in place. This does not imply that undertakings' investment portfolios already have to be changed to the extent undertakings would consider necessary when the Solvency II regime is fully applicable.
- 4.9. The Guidelines concerning the actuarial function contain references to capital requirements and technical provisions. These references are to be understood as references to Solvency II requirements. A majority of the tasks of the actuarial function concerns the coordination of Solvency II technical provisions. During the preparatory period these tasks are mainly relevant with regard to the submission of interim information to national competent authorities. There is no full framework for technical provisions valuation during this period. For the purpose of the preparatory reporting and only for that purpose the framework will be provided later.
- 4.10. According to Solvency II Directive, national competent authorities are expected to ensure that these Guidelines are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of the insurance and reinsurance undertaking. The Guidelines already reflect the application of the principles of proportionality by having the principle embedded.
- 4.11. The national competent authorities should apply the Guidelines to both individual insurance undertakings and mutatis mutandis at the level of the group. Additionally, for groups national competent authorities need to apply the group specific Guidelines.
- 4.12. For the purpose of these Guidelines, the following definition has been developed:
- "the responsible entity" which is used in the group specific Guidelines as "the entity responsible for fulfilling the governance requirements at group level".

4.13. The Guidelines shall apply from 1 January 2014.

Section I: General Provisions for preparatory Guidelines

Guideline 1 – General provisions for Guidelines

- 4.14. National competent authorities should take the appropriate steps in order to put in place from 1 January 2014 the present Guidelines on System of Governance.
- 4.15. National competent authorities should ensure that insurance and reinsurance undertakings and groups take the appropriate steps to:
- a. build an effective system of governance in accordance with Solvency II Directive which provides for sound and prudent management;
 - b. build an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies; and
 - c. provide qualitative information that will allow national competent authorities to evaluate the quality of the system of governance.

Guideline 2 – Progress report to EIOPA

- 4.16. National competent authorities should send to EIOPA, a progress report on the application of these Guidelines by the end of February following each relevant year, the first being by 28 February 2015 based on the period 1 January 2014 to 31 December 2014.

Section II: System of Governance

Chapter I: General governance requirements

Guideline 3 – The administrative, management or supervisory body (AMSB)

- 4.17. In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the administrative, management or supervisory body of the undertaking has appropriate interaction with any committee it establishes as well as with senior management and with other key functions in the undertaking, proactively requesting information from them and challenging that information when necessary.
- 4.18. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that at group level, the administrative, management or supervisory body of the responsible entity has an appropriate interaction with the administrative, management or supervisory bodies of all entities within the group, requesting information

proactively and challenging the decisions in the matters that may affect the group.

Guideline 4 – Organisational and operational structure

- 4.19. In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking has organisational and operational structures aimed at supporting the strategic objectives and operations of the undertaking. Such structures should be able to be adapted to changes in the strategic objectives, operations or in the business environment of the undertaking within an appropriate period of time.
- 4.20. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the administrative, management or supervisory body of the responsible entity assesses how changes to the group's structure impact on the sustainable financial position of the entities affected and makes the necessary adjustments in a timely manner.
- 4.21. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that, in order to take appropriate measures, the administrative, management or supervisory body of the responsible entity has an appropriate knowledge of the corporate organisation of the group, the business model of its different entities and the links and relationships between them and the risks arising from the group's structure.

Guideline 5 – Key functions

- 4.22. In accordance with Articles 44, 46, 47 and 48 of Solvency II Directive, national competent authorities should ensure that the undertaking appropriately implements the following key functions: risk management function, compliance function, internal audit function and actuarial function.
- 4.23. In accordance with Articles 44, 46, 47, 48 and 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity appropriately implements the following key functions: risk management function, compliance function, internal audit function and actuarial function at the level of the group.

Guideline 6 – Decision-making

- 4.24. In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking ensures that at least two persons effectively run the undertaking. That implies that any significant

decision of the undertaking involves at least two persons who effectively run the undertaking before the decision is being implemented.

Guideline 7 – Documentation of decisions taken at the level of the AMSB

4.25. In accordance with Article 41 and Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking appropriately documents the decisions taken at the level of the administrative, management or supervisory body of the undertaking and how information from the risk management system has been taken into account.

Guideline 8 – Internal review of the system of governance

4.26. In accordance with Article 41 of Solvency II Directive, national competent authorities should 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, taking into account the nature, scale and complexity of the business both at individual and at group level, as well as the structure of the group.

4.27. In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the scope, findings and conclusions of the review are properly documented and reported to the administrative, management or supervisory body of the undertaking. Suitable feedback loops are necessary to ensure follow-up actions are undertaken and recorded.

Guideline 9 – Policies

4.28. In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking aligns all policies required as part of the system of governance with each other and with its business strategy. Each policy should clearly set out at least:

- a) the goals pursued by the policy;
- b) the tasks to be performed and the person or role responsible for them;
- c) the processes and reporting procedures to be applied; and
- d) the obligation of the relevant organisational units to inform the risk management, internal audit and the compliance and actuarial functions of any facts relevant for the performance of their duties.

4.29. In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that in the policies that cover the key functions, the undertaking also addresses the position of these functions within the undertaking, their rights and powers.

Guideline 10 – Contingency plans

4.30. In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking identifies risks to be addressed by contingency plans covering the areas where it considers itself to be vulnerable, and reviews, updates and tests these contingency plans on a regular basis.

Chapter II: Fit and Proper

Guideline 11 – Fit requirements

4.31. In accordance with Article 42 of Solvency II Directive, national competent authorities should ensure that the undertaking ensures 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 persons to ensure appropriate diversity of qualifications, knowledge and relevant experience so that the undertaking is managed and overseen in a professional manner.

4.32. In accordance with Article 42 of Solvency II Directive, national competent authorities should ensure that the undertaking ensures that the members of the administrative, management or supervisory body collectively possess appropriate qualification, experience and knowledge about at least:

- a) insurance and financial markets;
- b) business strategy and business model;
- c) system of governance;
- d) financial and actuarial analysis; and
- e) regulatory framework and requirements.

Guideline 12 – Proper requirements

4.33. In accordance with Article 42 of Solvency II Directive, national competent authorities should ensure that the undertaking, when assessing whether a person is 'proper', includes an assessment of that person's honesty and financial soundness based on relevant evidence regarding their character, personal behaviour and business conduct including any criminal, financial, supervisory aspects regardless of jurisdiction. The period of limitation of the committed offence is judged based on national law or practice.

Guideline 13 – Fit and proper policies and procedures

- 4.34. In accordance with Article 41 and 42 of Solvency II Directive, national competent authorities should ensure that the undertaking has a policy on the fit and proper requirements, which includes at least:
- a) a description of the procedure for assessing the fitness and propriety of the persons who effectively run the undertaking or have other key functions, both when being considered for the specific position and on an on-going basis;
 - b) a description of the situations that give rise to a re-assessment of the fit and proper requirements; and
 - c) a description of the fit and proper procedures for assessing other relevant personnel not subject to the requirements of Article 42 of Solvency II Directive according to internal standards, both when being considered for the specific position and on an on-going basis.

Guideline 14 – Outsourcing of key functions

- 4.35. In accordance with Article 42 and 49 of Solvency II Directive, national competent authorities should ensure that the undertaking applies the fit and proper procedures in assessing persons employed by the service provider or sub service provider to perform an outsourced key function.
- 4.36. In accordance with Article 42 and 49 of Solvency II Directive, national competent authorities should ensure that the undertaking designates a person within the undertaking with overall responsibility for the outsourced key function who is fit and proper and possesses sufficient knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider.

Chapter III: Risk Management

Guideline 15 – Role of the administrative, management or supervisory body in the risk management system

- 4.37. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the administrative, management or supervisory body of the undertaking is ultimately responsible for ensuring the effectiveness of the risk management system, setting the undertaking's risk appetite and overall risk tolerance limits as well as approving the main risk management strategies and policies.
- 4.38. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the administrative, management or supervisory body of the responsible entity is responsible for the effectiveness of the risk management system of the whole group. This risk management system should include at least:

- a) the strategic decisions and policies on risk management at group level;
 - b) the definition of group's risk appetite and overall risk tolerance limits; and
 - c) the identification, measurement, management, monitoring and reporting of risks at group level.
- 4.39. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that such strategic decisions and policies are consistent with the group's structure, size and the specificities of the entities in the group. It also ensures that the specific operations, which are material, and associated risks of each entity in the group are covered and in addition, it ensures that an integrated, consistent and efficient risk management of the group is put in place.

Guideline 16 – Risk management policy

- 4.40. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking establishes a risk management policy which at least:
- a) defines the risk categories and the methods to measure the risks;
 - b) outlines how the undertaking manages each relevant category, area of risks and any potential aggregation of risks;
 - c) describes the connection with the overall solvency needs assessment as identified in the forward looking assessment of the undertaking's own risks (based on the ORSA principles), the regulatory capital requirements and the undertaking's risk tolerance limits;
 - d) specifies risk tolerance limits within all relevant risk categories in line with the undertaking's overall risk appetite; and
 - e) describes the frequency and content of regular stress tests and the situations that would warrant ad-hoc stress tests.

Guideline 17 – Risk management function: general tasks

- 4.41. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the risk management function to report to the administrative, management or supervisory body on risks that have been identified as potentially material. The risk management function should also report on other specific areas of risks both on its own initiative and following requests from the administrative, management or supervisory body.

4.42. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that the risk policy is implemented consistently across the group.

Guideline 18 – Underwriting and reserving risk management policy

4.43. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in its risk management policy, the undertaking covers at least the following with regard to underwriting and reserving risk:

- a) the types and characteristics of the insurance business, such as the type of insurance risk the undertaking is willing to accept;
- b) how the adequacy of premium income to cover expected claims and expenses is to be ensured;
- c) the identification of the risks arising from the undertaking's insurance obligations, including embedded options and guaranteed surrender values in its products;
- d) how, in the process of designing a new insurance product and the premium calculation, the undertaking takes account of the constraints related to investments; and
- e) how, in the process of designing a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.

Guideline 19 – Operational risk management policy

4.44. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in the risk management policy, the undertaking covers at least the following with regard to operational risk:

- a) identification of the operational risks it is or might be exposed to and assessment of the way to mitigate them;
- b) activities and internal processes for managing operational risks, including the IT system supporting them; and
- c) risk tolerance limits with respect to the undertaking's main operational risk areas.

4.45. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking has processes to identify, analyse and report on operational risk events. For this purpose, it should establish a process for collecting and monitoring operational risk events.

4.46. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that for the purposes of operational risk

management, the undertaking develops and analyses an appropriate set of operational risk scenarios based on at least the following approaches:

- a) the failure of a key process, personnel or system; and
- b) the occurrence of external events.

Guideline 20 – Control and documentation of risk-mitigation techniques

4.47. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that for the purposes of proper use of reinsurance and other risk mitigation techniques the undertaking analyses, assesses and documents the effectiveness of all risk mitigation techniques employed.

Guideline 21 – Reinsurance and other risk-mitigation techniques – risk management policy

4.48. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in the risk management policy the undertaking covers at least the following with regard to risk mitigation techniques:

- a) identification of the level of risk transfer appropriate to the undertaking's defined risk limits and which kind of reinsurance arrangements are most appropriate considering the undertaking's risk profile;
- b) principles for the selection of such risk mitigation counterparties and procedures for assessing and monitoring the creditworthiness and diversification of reinsurance counterparties;
- c) procedures for assessing the effective risk transfer and consideration of basis risk; and
- d) liquidity management to deal with any timing mismatch between claims' payments and reinsurance recoverable.

Guideline 22 – Asset-liability management policy

4.49. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in its risk management policy the undertaking covers at least the following information with regard to asset-liability management:

- a) a description of the procedure for identification and assessment of different natures of mismatches between assets and liabilities, at least with regard to terms and currency;

- b) a description of mitigation techniques to be used and the expected effect of relevant risk-mitigating techniques on asset-liability management;
- c) a description of deliberate mismatches permitted; and
- d) a description of the underlying methodology and frequency of stress tests and scenario tests to be carried out.

Guideline 23 – Investment risk management policy

4.50. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that in its risk management policy, the undertaking covers at least the following with regard to investments:

- a) the level of security, quality, liquidity, profitability and availability the undertaking is aiming for with regard to the whole portfolio of assets and how it plans to achieve this;
- b) its quantitative limits on assets and exposures, including off-balance sheet exposures, that are to be established to help to ensure the undertaking achieves its desired level of security, quality, liquidity, profitability and availability for the portfolio;
- c) consideration of the financial market environment;
- d) the conditions under which the undertaking can pledge or lend assets;
- e) the link between market risk and other risks in adverse scenarios;
- f) the procedure for appropriately valuing and verifying the investment assets;
- g) the procedures to monitor the performance of the investments and review the policy when necessary; and
- h) how the assets are to be selected in the best interest of policyholders and beneficiaries.

Guideline 24 – Liquidity risk management policy

4.51. In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in its risk management policy, the undertaking covers at least the following items with regard to liquidity risk:

- a) the procedure for determining the level of mismatch between the cash inflows and the cash outflows of both assets and liabilities, including expected cash flows of direct insurance and reinsurance such as claims, lapses or surrenders;

- b) consideration of total liquidity needs in the short and medium term, including an appropriate liquidity buffer to guard against a liquidity shortfall;
- c) consideration of the level and monitoring of liquid assets, including a quantification of potential costs or financial losses arising from an enforced realisation;
- d) identification and costs of alternative financing tools; and
- e) consideration of the effect on the liquidity situation of expected new business.

Chapter IV: The “prudent person” principle and the system of governance

Guideline 25 – Investment risk management

4.52. In accordance with Article 132 of Solvency II Directive, national competent authorities should ensure that the undertaking does not solely depend on the information provided by third parties, such as financial institutions, asset managers and rating agencies. In particular, the undertaking should develop its own set of key risk indicators in line with its investment risk management policy and business strategy.

4.53. In making its investment decisions, the undertaking should take into account the risks associated with the investments without relying only on the risk being adequately captured by the capital requirements.

Guideline 26 – Assessment of non-routine investment activities

4.54. In accordance with Article 132 of Solvency II Directive, national competent authorities should ensure that before performing any investment or investment activity of a non-routine nature the undertaking carries out an assessment of at least:

- a) its ability to perform and manage the investment or the investment activity;
- b) the risks specifically related to the investment or the investment activity and the impact of the investment or the investment activity on the undertaking’s risk profile;
- c) the consistency of the investment or investment activity with the beneficiaries’ and policyholders’ interest, liability constraints set by the undertaking and efficient portfolio management; and
- d) the impact of this investment or investment activity on the quality, security, liquidity, profitability and availability of the whole portfolio.

4.55. In accordance with Article 132 of Solvency II Directive, national competent authorities should ensure that the undertaking has procedures that require that where such investment or investment activity entails a significant risk or change in the risk profile, the undertaking's risk management function communicates such a risk or change in the risk profile to the administrative, management or supervisory body of the undertaking.

Guideline 27 – Unit-linked and index-linked contracts

4.56. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the investments of unit-linked and index-linked contracts of the undertaking are selected in the best interest of policyholders and beneficiaries taking into account any disclosed policy objectives.

4.57. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that, in the case of unit-linked business, the undertaking takes into account and manages the constraints related to unit-linked contracts, in particular liquidity constraints.

Guideline 28 – Assets not admitted for trading on a regulated financial market

4.58. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking implements, manages, monitors and controls procedures in relation to investments that are not admitted to trading on a regulated financial market or to complex products, which are difficult to value.

4.59. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking treats assets admitted to trading, but not traded or traded on a non-regular basis, similarly to those assets not admitted to trading on a regulated financial market.

Guideline 29 – Derivatives

4.60. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking, when it uses derivatives, implements the procedures in line with its risk management policy on investments to monitor the performance of these derivatives.

4.61. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking demonstrates how the quality, security, liquidity or profitability of the portfolio is

improved without significant impairment of any of these features where derivatives are used to facilitate efficient portfolio management.

- 4.62. In accordance with Articles 44 and 132 of Solvency II Directive, 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.

Guideline 30 – Securitised instruments

- 4.63. In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that, where the undertaking invests in securitised instruments, it ensures that its interests and the interests of the originator or sponsor concerning the securitised assets are well understood and aligned.

Chapter V: Own fund requirements and the system of governance

Guideline 31 – Capital Management Policy

- 4.64. In accordance with Article 41 and 93 of Solvency II Directive, national competent authorities should ensure that the undertaking should be developing a capital management policy which includes:
- a. a description of the procedure to ensure that own fund items, both at issue and subsequently, meet the requirements of the applicable capital and distribution regime and are classified correctly where the applicable regime requires;
 - b. a description of the procedure to monitor the issuance of own fund items according to the medium term capital management plan;
 - c. a description of the procedure to ensure that the terms and conditions of any own fund item are clear and unambiguous in relation to the criteria of the applicable capital regime; and
 - d. a description of the procedures to
 - i. ensure that any policy or statement in respect of ordinary share dividends is taken into account in consideration of the capital position; and
 - ii. identify and document instances in which distributions on an own funds item are expected to be deferred or cancelled.

Guideline 32 – Medium-term Capital Management Plan

- 4.65. In accordance with Article 41 and 93 of Solvency II Directive, national competent authorities should ensure that the undertaking is developing a medium-term capital management plan which is to be monitored by the

administrative, management or supervisory body of the undertaking and which includes at least considerations of:

- a. any planned capital issuance;
- b. the maturity, incorporating both the contractual maturity and any earlier opportunity to repay or redeem, relating to the undertaking's own fund items;
- c. how any issuance, redemption or repayment of, or other variation in the valuation of, an own funds item affects the application of any limits in the applicable capital regime; and
- d. the application of the distribution policy.

4.66. In accordance with Article 41 and 93 of Solvency II Directive, national competent authorities should ensure that the undertaking takes into account in the capital management plan the output from the risk management system and the forward looking assessment of own risks (based on the ORSA principles).

Chapter VI: Internal Controls

Guideline 33 – Internal Control environment

4.67. In accordance with Article 46 of Solvency II Directive, national competent authorities should ensure that the undertaking promotes the importance of performing appropriate internal controls by ensuring that all personnel are aware of their role in the internal control system. The control activities should be commensurate to the risks arising from the activities and processes to be controlled.

4.68. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures a consistent implementation of the internal control systems across the group.

Guideline 34 – Monitoring and reporting

4.69. In accordance with Article 46 of Solvency II Directive, national competent authorities should ensure that the undertaking establishes that the monitoring and reporting mechanisms within the internal control system provide the administrative, management or supervisory body with the relevant information for the decision-making processes.

Chapter VII: Internal audit function

Guideline 35 – Independence

4.70. In accordance with Article 47 of Solvency II Directive, national competent authorities should ensure that the undertaking provides that when performing an audit and when evaluating and reporting the audit results,

the internal audit function is not subject to influence from the administrative, management or supervisory body that can impair its independence and impartiality.

Guideline 36 – Internal audit policy

- 4.71. In accordance with Articles 41 and 47 of Solvency II Directive, national competent authorities should ensure that the undertaking has an internal audit policy which covers at least the following areas:
- a. the terms and conditions according to which the internal audit function can be called upon to give its opinion or assistance or to carry out other special tasks;
 - b. where appropriate, internal rules setting out the procedures the person responsible for the internal audit function needs to follow before informing the supervisory authority; and
 - c. where appropriate, the criteria for the rotation of staff assignments.
- 4.72. In accordance with Articles 41 and 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that the audit policy at the level of the group describes how the internal audit function:
- a. coordinates the internal audit activity across the group; and
 - b. ensures compliance with the internal audit requirements at the group level.

Guideline 37 – Internal audit function tasks

- 4.73. In accordance with Article 47 of Solvency II Directive, national competent authorities should ensure that the undertaking requires that the internal audit function, at least:
- a. to establish, implement and maintain an audit plan setting out the audit work to be undertaken in the upcoming years, taking into account all activities and the complete system of governance of the undertaking;
 - b. to take a risk-based approach in deciding its priorities;
 - c. to report the audit plan to the administrative, management or supervisory body of the undertaking;
 - d. to issue an internal audit report to the AMSB based on the result of work carried out in accordance with point (a), which includes findings and recommendations, including the envisaged period of time to remedy the shortcomings and the persons responsible for doing so, and information on the achievement of audit recommendations;

- e. to submit the internal audit report to the administrative, management or supervisory body on at least an annual basis; and
- f. to verify compliance with the decisions taken by the administrative, management or supervisory body on the basis of those recommendations referred to in point (d).

4.74. In accordance with Article 47 of Solvency II Directive, national competent authorities should ensure that where necessary, the undertaking provides that the internal audit function may carry out audits which are not included in the audit plan.

Chapter VIII: Actuarial Function

Guideline 38 – Tasks of the actuarial function

4.75. In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking takes appropriate measures to address the potential conflicts of interests, if the undertaking decides to add additional tasks or activities to the tasks and activities of the actuarial function.

4.76. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity requires that the actuarial function gives an opinion on the reinsurance policy and the reinsurance program for the group as a whole.

Guideline 39 – Coordination of the calculation of technical provisions

4.77. In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to identify any inconsistency with the requirements set out in Articles 76 to Article 85 of Solvency II Directive for the calculation of technical provisions and propose corrections as appropriate.

4.78. In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to explain any material effect of changes in data, methodologies or assumptions between valuation dates on the amount of technical provisions if already calculated on a Solvency II basis.

Guideline 40 – Data quality

4.79. In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to assess the consistency of the internal and external data used

in the calculation of technical provisions against the data quality standards as set in Solvency II Directive. Where relevant, the actuarial function provides recommendations on internal procedures to improve data quality so as to ensure that the undertaking is in a position to comply with the related Solvency II requirement when implemented.

Guideline 41 – Underwriting policy and reinsurance arrangements

4.80. In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function, when providing its opinion on the underwriting policy and the reinsurance arrangements, to take into consideration the interrelations between these and the technical provisions.

Guideline 42 – The actuarial function of an undertaking with an internal model under pre-application

4.81. In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that, during the pre-application process, the undertaking requires the actuarial function to contribute to specifying which risks within their domain of expertise are covered by the internal model. The actuarial function should also contribute to how dependencies between these risks and dependencies between these risks and other risks are derived. This contribution is based on a technical analysis and should reflect the experience and expertise of the function.

Guideline 43 - Actuarial reporting to the administrative, management or supervisory body

4.82. In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to report in writing at least annually to the administrative, management or supervisory body. The reporting should document all material tasks that have been undertaken by the actuarial functions, their results, clearly identifying any deficiencies and giving recommendations as to how such deficiencies could be remedied.

Chapter IX: Outsourcing

Guideline 44 – Critical or important operational functions and activities

4.83. In accordance with Article 49 of Solvency II Directive, national competent authorities should ensure that the undertaking determines and documents whether the outsourced function or activity is a critical or important function or activity on the basis of whether this function or activity is

essential to the operation of the undertaking as it would be unable to deliver its services to policyholders without the function or activity.

Guideline 45 – Underwriting

4.84. In accordance with Article 49 of Solvency II Directive, national competent authorities should ensure that, when an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an insurance undertaking, the undertaking ensures that the activity of this intermediary is subject to the outsourcing requirements.

Guideline 46 – Intra-group outsourcing

4.85. In accordance with Article 49 of Solvency II, national competent authorities should ensure that, if key functions are outsourced within the group, the responsible entity documents which functions relate to which legal entity and ensures that the performance of the key functions at the level of the undertaking is not impaired by such arrangements.

Guideline 47 – Outsourcing written policy

4.86. In accordance with Article 49 and Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking that outsources or considers outsourcing covers in its policy the undertaking's approach and processes for outsourcing from the inception to the end of the contract. This in particular includes:

- a. the criteria for determining whether a function or activity is critical or important;
- b. how a service provider of suitable quality is selected and how and how often his performance and results are assessed;
- c. the details to be included in the written agreement with the service provider; and
- d. business contingency plans, including exit strategies for outsourced critical or important functions or activities.

Section III: Group governance specific requirements

Guideline 48 – Responsible entity

4.87. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the parent insurance or reinsurance undertaking or insurance holding company identifies the responsible entity and reports it to the group supervisor.

Guideline 49 – Responsibilities for setting internal governance requirements

- 4.88. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity sets adequate internal governance requirements across the group appropriate to the structure, business and risks of the group and of its related entities, and considers the appropriate structure and organization for risk management at group level, setting a clear allocation of responsibilities between all entities of the group.
- 4.89. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity does not impair the responsibilities of the administrative, management or supervisory body of each entity in the group when setting up its own system of governance.

Guideline 50 – System of Governance at group level

- 4.90. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity:
- a. 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;
 - b. has in place reporting lines within the group and effective systems for ensuring information flows in the group bottom up and top-down as well;
 - c. documents and informs all the entities in the group about the tools used to identify, measure, monitor, manage and report all risks to which the group is exposed; and
 - d. takes into account the interests of all the entities belonging to the group and how these interests contribute to the common purpose of the group as a whole over the long term.

Guideline 51 – Risks with significant impact at group level

- 4.91. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity considers in its risk management system the risks both at individual and group level and their interdependencies, in particular:
- a. reputational risk and risks arising from intra-group transactions and risk concentrations, including contagion risk, at the group level;
 - b. interdependencies between risks stemming from conducting business through different entities and in different jurisdictions;

- c. risks arising from third-country entities;
- d. risks arising from non-regulated entities; and
- e. risks arising from other regulated entities.

Guideline 52 – Group risk management

- 4.92. In accordance with Article 246 of Solvency I Directive I, national competent authorities should ensure that the responsible entity supports in its risk management at the level of the group by appropriate processes and procedures to identify, measure, manage, monitor and report the risks that the group and each individual entity are or might be exposed to.
- 4.93. In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that the structure and organization of the group risk management do not impair the undertaking's legal ability to fulfil its legal, regulatory and contractual obligations.

Compliance and Reporting Rules

- 4.94. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, Competent Authorities shall make every effort to comply with guidelines and recommendations.
- 4.95. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 4.96. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within 2 months after the publication.
- 4.97. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting.

Final Provision on Review

- 4.98. These Guidelines shall be subject to a review by EIOPA.

5. Revised Explanatory Text

Section I: General Provisions for preparatory Guidelines

Guideline 1 – General provisions for Guidelines

National competent authorities should take the appropriate steps in order to put in place from 1 January 2014 the present Guidelines on System of Governance.

National competent authorities should ensure that insurance and reinsurance undertakings and groups take the appropriate steps to:

- a. build an effective system of governance in accordance with Solvency II Directive which provides for sound and prudent management;**
- b. build an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies; and**
- c. provide qualitative information that will allow national competent authorities to evaluate the quality of the system of governance.**

Guideline 2 – Progress report to EIOPA

National competent authorities should send to EIOPA, a progress report on the application of these Guidelines by the end of February following each relevant year, the first being by 28 February 2015 based on the period 1 January 2014 to 31 December 2014.

Section II: System of Governance

Chapter I: General governance requirements

Guideline 3 – The administrative, management or supervisory body (AMSB)

In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the administrative,

management or supervisory body of the undertaking has appropriate interaction with any committee it establishes as well as with senior management and with other key functions in the undertaking, proactively requesting information from them and challenging that information when necessary.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that at group level, the administrative, management or supervisory body of the responsible entity has an appropriate interaction with the administrative, management or supervisory bodies of all entities within the group, requesting information proactively and challenging the decisions in the matters that may affect the group.

- 5.1. The focal point of the governance system is the administrative, management or supervisory body. The term “administrative, management or supervisory body” used in Solvency II – which in these Guidelines is shortened to the term “AMSB” - covers the single board in a one-tier system and either the management or the supervisory board of a two-tier board system depending on their responsibilities and duties. When transposing Solvency II, each Member State considers its own specificities and attributes responsibilities and duties to the appropriate board, if necessary.
- 5.2. An undertaking’s AMSB is expected to consider whether a committee structure is appropriate and, if so, what its mandate and reporting lines should be. For example, it could consider forming audit, risk, investment or remuneration committees etc.

Guideline 4 – Organisational and operational structure

In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking has organisational and operational structures aimed at supporting the strategic objectives and operations of the undertaking. Such structures should be able to be adapted to changes in the strategic objectives, operations or in the business environment of the undertaking within an appropriate period of time.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the administrative, management or supervisory body of the responsible entity assesses how changes to the group’s structure impact on the sustainable financial position of the entities affected and makes the necessary adjustments in a timely manner.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that, in order to take

appropriate measures, the administrative, management or supervisory body of the responsible entity has an appropriate knowledge of the corporate organisation of the group, the business model of its different entities and the links and relationships between them and the risks arising from the group's structure.

- 5.3. Sound and prudent management of the business implies among other things a consistent application of risk management and internal control practices throughout the entire organisational structure of the undertaking. In order to support this goal, consideration ought to be given to drawing up and implementing a code of conduct for all staff, including the AMSB and senior management. Apart from the general code of conduct, everybody in the undertaking also has to be familiar with more detailed codes applicable to their own areas of expertise.
- 5.4. It is important that the undertaking ensures that it has an organisational culture that enables and supports the effective operation of its system of governance. This requires an appropriate "tone at the top" with the AMSB and senior management providing appropriate organisational values and priorities.
- 5.5. The undertaking needs to ensure that each key function has an appropriate standing within the organisational structure. This requires that their responsibilities and the authority they have to exercise their tasks are clearly set out.
- 5.6. The operational structure supports the main functions of the organisational structure. It identifies the business processes involving material risks and sets out how they should be executed, including responsibilities and information flows, to ensure that these processes are adequately monitored and controlled.
- 5.7. The undertaking has to document its internal organisational and operational structures and keep this documentation up to date and keep them for an appropriate time frame, taking into account prescribed record retention periods.
- 5.8. The assessment of the appropriateness of the organisational and operational structure is required both at individual and group level. Inquiries addressed by the group supervisor, in cooperation with the college of supervisors, on the appropriateness of the organizational and operational structure may be expected where changes occur in the group's structures, as well as on interconnections and significant transactions between group entities.

Guideline 5 – Key functions

In accordance with Articles 44, 46, 47 and 48 of Solvency II Directive, national competent authorities should ensure that the undertaking appropriately implements the following key

functions: risk management function, compliance function, internal audit function and actuarial function.

In accordance with Articles 44, 46, 47, 48 and 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity appropriately implements the following key functions: risk management function, compliance function, internal audit function and actuarial function at the level of the group.

Guideline 6 – Decision-making

In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking ensures that at least two persons effectively run the undertaking. That implies that any significant decision of the undertaking involves at least two persons who effectively run the undertaking before the decision is being implemented.

- 5.9. Significant decisions as opposed to day-to-day decisions do not concern the spate of usual decisions to be taken at the top level of the undertaking in the running of the business but are rather decisions that are unusual or that will or could have a material impact on the undertaking. This could be e.g. decisions that affect the strategy of the undertaking, its business activities or its business conduct, that could have serious legal or regulatory consequences, that could have major financial effects or major implications for staff or policyholders or that could potentially result in repercussions for the undertaking's reputation.
- 5.10. Persons who effectively run the undertaking are not limited to executive directors but include senior management and may include non-executive directors, provided these can be said to effectively run the undertaking.

Guideline 7 – Documentation of decisions taken at the level of the AMSB

In accordance with Article 41 and Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking appropriately documents the decisions taken at the level of the administrative, management or supervisory body of the undertaking and how information from the risk management system has been taken into account.

Guideline 8 – Internal review of the system of governance

In accordance with Article 41 of Solvency II Directive, national

competent authorities should 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, taking into account the nature, scale and complexity of the business both at individual and at group level, as well as the structure of the group.

In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the scope, findings and conclusions of the review are properly documented and reported to the administrative, management or supervisory body of the undertaking. Suitable feedback loops are necessary to ensure follow-up actions are undertaken and recorded.

- 5.11. The AMSB has to ensure that the system of governance is internally reviewed on a regular basis. The review undertaken by the internal audit function on the system of governance as part of its responsibilities can provide input to this internal review.
- 5.12. The feedback procedures need to encompass at least all key functions and include a review of the system of governance with recommendations for revisions where necessary. After the feedback reports are presented to the AMSB, discussions on any challenge provided or improvements suggested by the AMSB have to be appropriately documented.

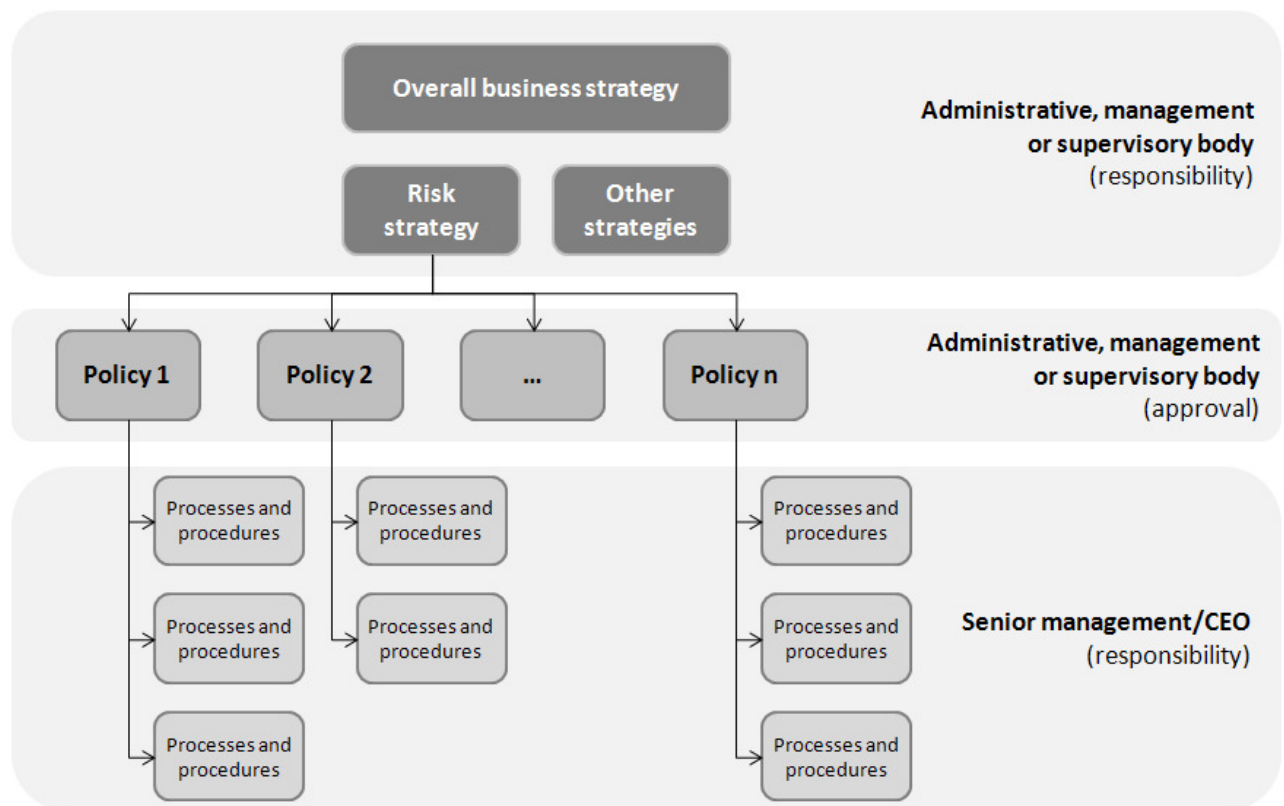
Guideline 9 – Policies

In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking aligns all policies required as part of the system of governance with each other and with its business strategy. Each policy should clearly set out at least:

- a) the goals pursued by the policy;**
- b) the tasks to be performed and the person or role responsible for them;**
- c) the processes and reporting procedures to be applied;**
and
- d) the obligation of the relevant organisational units to inform the risk management, internal audit and the compliance and actuarial functions of any facts relevant for the performance of their duties.**

In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that in the policies that cover the key functions, the undertaking also addresses the position of these functions within the undertaking, their rights and powers.

5.13. The AMSB is responsible for the development and setting of the business strategy. It also has to approve written policies in order to materialise that strategy. This idea is summarised as an example in the following chart:



5.14. The undertaking may combine the written policies required by Solvency II as it sees fit in line with its organisational structure and processes.

5.15. Written policies are subject to prior approval by the AMSB not only for the original policy proposal but also for any subsequent changes, unless these are minor.

5.16. A proper implementation of the written policies requires ensuring that all relevant staff members are familiar with and observe the policies for their respective area of activities. It also requires that any changes to the policies are promptly communicated to them.

5.17. The review requirement applies to all written policies undertakings have to implement in order to comply with Solvency II, i.e. it not only covers the policies explicitly referred to in Article 41(3) but also e.g. the “sub-policies” according to Article 44(2) and the model change policy.

5.18. Any review of the written policies has to be appropriately documented. The documentation needs to record who conducted the review and to include any suggested recommendations and the decisions subsequently taken by the AMSB in respect of those recommendations as well as the reasons for them.

Guideline 10 – Contingency plans

In accordance with Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking identifies risks to be addressed by contingency plans covering the areas where it considers itself to be vulnerable, and reviews, updates and tests these contingency plans on a regular basis.

- 5.19. The undertakings has to develop and document contingency plans to ensure that business disruption or possible losses are limited if there is an unforeseen interruption to its systems and procedures. These might for example arise from natural catastrophes such as floods or earthquakes, from terrorist attacks, serious fires, a breakdown of the IT systems or a pandemic that affects a large number of employees. The aim of contingency planning is to enable the undertaking to continue its business activity at a predetermined minimum level to protect individuals and tangible property as well as assets.
- 5.20. While it is not necessary that contingency planning includes every activity of the undertaking, it has to take into consideration all significant activities. Test runs provide assurance that the plans will actually work effectively should an emergency arise. The plans have to be made available to all relevant management and personnel so that every person involved knows their role in advance of any emergency situation.
- 5.21. The undertaking also has to give proper consideration to determining communication channels in case of emergencies.

Chapter II: Fit and Proper

- 5.22. The undertaking has to assess the fitness and propriety as set out in these Guidelines regarding all persons who effectively run the undertaking as well as all persons working within a key function.

Guideline 11 – Fit requirements

In accordance with Article 42 of Solvency II Directive, national competent authorities should ensure that the undertaking ensures 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 persons to ensure appropriate diversity of qualifications, knowledge and relevant experience so that the undertaking is managed and overseen in a professional manner.

In accordance with Article 42 of Solvency II Directive, national competent authorities should ensure that the undertaking ensures

that the members of the administrative, management or supervisory body collectively possess appropriate qualification, experience and knowledge about at least:

- a) insurance and financial markets;**
- b) business strategy and business model;**
- c) system of governance;**
- d) financial and actuarial analysis; and**
- e) regulatory framework and requirements.**

- 5.23. When assessing the knowledge, competence and experience required for the performance of a particular role within the AMSB, the qualifications and experience of other employees within the undertaking could be taken into account as a relevant factor.
- 5.24. The fitness assessment is not limited to the moment of employment but includes arranging for further professional training as necessary, so that staff is also able to meet changing or increasing requirements of their particular responsibilities.
- 5.25. The members of the AMSB are not each expected to possess expert knowledge, competence and experience within all areas of the undertaking. However, the collective knowledge, competence and experience of the AMSB as a whole have to provide for a sound and prudent management of the undertaking.
- 5.26. When changes occur within the AMSB, e.g. replacement of one of the members of the AMSB, the undertaking is expected to be able to demonstrate at all times that the collective knowledge of the members of the AMSB is maintained at an adequate level.
- 5.27. 'Insurance and Financial Markets knowledge' means an awareness and understanding of the wider business, economic and market environment in which the undertaking operates and an awareness of the level of knowledge of and needs of policyholders.
- 5.28. 'Business strategy and business model knowledge' refers to a detailed understanding of the undertaking's business strategy and model.
- 5.29. 'System of Governance knowledge' means the awareness and understanding of the risks the undertaking is facing and the capability of managing them. Furthermore, it includes the ability to assess the effectiveness of the undertaking's arrangements to deliver effective governance, oversight and controls in the business and, if necessary, oversee changes in these areas.
- 5.30. 'Financial and actuarial analysis knowledge' means the ability to interpret the undertaking's financial and actuarial information, identify key issues,

put in place appropriate controls and take necessary measures based on this information.

- 5.31. 'Regulatory framework and requirements knowledge' means awareness and understanding of the regulatory framework in which the undertaking operates, in terms of both the regulatory requirements and expectations, and the capacity to adapt to changes to the regulatory framework without delay.

Guideline 12 – Proper requirements

In accordance with Article 42 of Solvency II Directive, national competent authorities should ensure that the undertaking, when assessing whether a person is 'proper', includes an assessment of that person's honesty and financial soundness based on relevant evidence regarding their character, personal behaviour and business conduct including any criminal, financial, supervisory aspects regardless of jurisdiction. The period of limitation of the committed offence is judged based on national law or practice.

- 5.32. Relevant criminal offences include any offence under the laws governing banking, financial, securities or insurance activity, or concerning securities markets or securities or payment instruments, including, but not limited, to laws on money laundering, market manipulation, or insider dealing and usury as well as any offences of dishonesty such as fraud or financial crime. They also include any other criminal offences under legislation relating to companies, bankruptcy, insolvency, or consumer protection.
- 5.33. Any other criminal offences currently being tried or having been tried in the past may also be relevant, as they can cast doubt on the integrity of the person.
- 5.34. Relevant disciplinary or administrative offences include any offences made under an activity of the financial sector, including offences under legislation relating to companies, bankruptcy, insolvency, or consumer protection.
- 5.35. When assessing the propriety of the person other circumstances than court decisions and on-going judicial proceedings, which may cast doubt on the repute and integrity of the person, may also be considered. These could include current investigations or enforcement actions, the imposition of administrative sanctions for non-compliance with provisions governing banking, financial, securities or insurance activity, securities markets, securities or payment instruments or any financial services legislation.
- 5.36. Further, current investigations or enforcement actions by any relevant regulatory or professional body for non-compliance with any relevant provisions could be taken into account.
- 5.37. Notwithstanding what has been written, having previous infringements does not automatically result in the person not being assessed as proper

for the duties he/she is to perform. It is recognised that, while criminal, disciplinary or administrative convictions or past misconduct are significant factors, the assessment of the fit and proper requirements is to be done on a case-by-case basis. Hence, consideration needs to be given to the type of misconduct or conviction, the level of appeal (definitive vs. non-definitive convictions), the lapse of time since the misconduct or conviction, and its severity, as well as the person's subsequent conduct.

- 5.38. All persons are expected to avoid, to the extent possible, activities that could create conflicts of interest or the appearance of conflicts of interest.
- 5.39. The proportionality principle does not result in different standards in the case of the propriety requirement, for persons who effectively run the undertaking or have other key functions, since the reputability and integrity of the persons should always be on the same adequate level irrespective of the nature, scale and complexity of the risks inherent to the business or of the undertaking's risk profile.
- 5.40. Proper considerations are relevant for all employees of an undertaking. However, any assessment needs to take into account their level of responsibility within the undertaking and will differ proportionately, according to whether or not, for example, they are persons who effectively run the undertaking or have other key functions.

Guideline 13 – Fit and proper policies and procedures

In accordance with Article 41 and 42 of Solvency II Directive, national competent authorities should ensure that the undertaking has a policy on the fit and proper requirements, which includes at least:

- a) a description of the procedure for assessing the fitness and propriety of the persons who effectively run the undertaking or have other key functions, both when being considered for the specific position and on an on-going basis;**
- b) a description of the situations that give rise to a re-assessment of the fit and proper requirements; and**
- c) a description of the fit and proper procedures for assessing other relevant personnel not subject to the requirements of Article 42 of Solvency II Directive according to internal standards, both when being considered for the specific position and on an on-going basis.**

- 5.41. The policy establishes which situations would imply a review of whether a person should still be regarded as fit and proper. At least the following situations are considered:

- a) when there are reasons to believe that a person will discourage the undertaking from pursuing the business in a way that is consistent with applicable legislation;
- b) when there are reasons to believe that a person will increase the risk of financial crime, e.g. money laundering or financing of terrorism; and
- c) when there are reasons to believe that sound and prudent management of the business of the undertaking is at risk.

Guideline 14 – Outsourcing of key functions

In accordance with Article 42 and 49 of Solvency II Directive, national competent authorities should ensure that the undertaking applies the fit and proper procedures in assessing persons employed by the service provider or sub service provider to perform an outsourced key function.

In accordance with Article 42 and 49 of Solvency II Directive, national competent authorities should ensure that the undertaking designates a person within the undertaking with overall responsibility for the outsourced key function who is fit and proper and possesses sufficient knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider.

- 5.42. If an undertaking outsources a key function, the undertaking also needs to ensure the service provider has checked the fitness and propriety of all persons working on that function.
- 5.43. The fitness of the person with overall responsibility for the outsourced key function at the undertaking is assessed taking into account that, while the oversight role carries ultimate responsibility for the key function, the level of knowledge required would not need to be as in depth as that of the relevant person(s) at the service provider. But at a minimum the person with overall responsibility for the outsourced key function at the undertaking has to possess enough knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider.
- 5.44. When outsourcing a key function, an undertaking also needs to consider all the other issues mentioned in the outsourcing Guidelines.

Chapter II: Risk Management

Guideline 15 – Role of the administrative, management or supervisory body in the risk management system

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the administrative,

management or supervisory body of the undertaking is ultimately responsible for ensuring the effectiveness of the risk management system, setting the undertaking's risk appetite and overall risk tolerance limits as well as approving the main risk management strategies and policies.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the administrative, management or supervisory body of the responsible entity is responsible for the effectiveness of the risk management system of the whole group. This risk management system should include at least:

- a) the strategic decisions and policies on risk management at group level;**
- b) the definition of group's risk appetite and overall risk tolerance limits; and**
- c) the identification, measurement, management, monitoring and reporting of risks at group level.**

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that such strategic decisions and policies are consistent with the group's structure, size and the specificities of the entities in the group. It also ensures that the specific operations, which are material, and associated risks of each entity in the group are covered and in addition, it ensures that an integrated, consistent and efficient risk management of the group is put in place.

- 5.45. While risk management is the responsibility of the undertaking's AMSB as a whole, the undertaking is expected to designate at least one member of the administrative, management or supervisory body to oversee the risk management system on its behalf.
- 5.46. Risk management is a continuous process that is used in the implementation of the undertaking's business strategy and allows for an appropriate understanding of the nature and significance of the risks to which it is exposed, including its sensitivity to those risks and its ability to mitigate them.
- 5.47. Within an undertaking there has to be a coordinated and integrated approach to risk management and a common "risk language" across the organisation.
- 5.48. It is the responsibility of the undertaking to choose the way it defines and describe its risk appetite and overall risk tolerance limits. Nevertheless risk appetite and overall risk tolerance limits have to reflect the following characteristics:
- a) Risk appetite addresses the attitude of the AMSB toward the main categories of risks. It needs to be clear and detailed enough to

express and reflect the strategic high level objectives of the AMSB. It may include a quantitative assessment in terms of risk and capital. The AMSB will give appropriate directions concerning the definition of risk appetite.

- b) "Overall risk tolerance limits" expresses the restrictions the undertaking imposes on itself when taking risks. It takes into account:
 - i. the relevant constraints that effectively limit the capacity to take risks. These constraints can go beyond the framework of solvency as defined in Solvency II;
 - ii. the risk appetite; and
 - iii. other relevant information (e.g. current risk profile of the undertaking, interrelationship between risks).

5.49. The definition of overall risk tolerance limits is understood and endorsed by the AMSB.

5.50. The risk tolerance limits defined for all relevant risk categories are in line with the overall risk tolerance and limits to guide day-to-day business operations.

5.51. The AMSB is also responsible for the approval of any periodic revision of the main strategies and business policies of the undertaking in terms of risk management.

5.52. The embedding of the risk management system in the organisational structure is demonstrated by adequate risk management processes and procedures across the undertaking and adequate consideration of the risks involved in all major decisions.

5.53. The interplay between individual and group levels is addressed in [Title II]. The risk management system of entities belonging to groups is necessarily linked to the group's business strategy and operations. The risk management strategy is underpinned by an integrated framework of responsibilities and functions driven from group level down to individual levels. The administrative, management or supervisory bodies of the entities within the group, each within the scope of its duties, are responsible for implementing the risk management strategies and policies established by the administrative, management or supervisory body of the entity responsible for fulfilling the requirements at group level.

5.54. The identification and measurement or assessment of risks is to be documented.

5.55. Internal risk reporting is required to be a continuous process within all levels of the undertaking. The frequency and content of reporting to the AMSB ensures that it has all necessary current information for its decision-taking with an appropriate level of detail.

Guideline 16 – Risk management policy

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking establishes a risk management policy which at least:

- a) defines the risk categories and the methods to measure the risks;**
- b) outlines how the undertaking manages each relevant category, area of risks and any potential aggregation of risks;**
- c) describes the connection with the overall solvency needs assessment as identified in the forward looking assessment of the undertaking's own risks (based on the ORSA principles), the regulatory capital requirements and the undertaking's risk tolerance limits;**
- d) specifies risk tolerance limits within all relevant risk categories in line with the undertaking's overall risk appetite; and**
- e) describes the frequency and content of regular stress tests and the situations that would warrant ad-hoc stress tests.**

5.56. The risk management policy covers all material risks, including emerging risks⁵, quantifiable or non-quantifiable and reputational and strategic risks where relevant.

5.57. The risk management policy has to consider not only each relevant category and area of risks but also potential accumulation and interactions of risks. Where relevant, the risk management policy will also consider indirect effects of risks (e.g. indirect exposure to liquidity risks with regard to gearing, margin calls on derivatives or stock lending positions).

5.58. In addition to specific stress tests prescribed under the supervisory regime, the undertaking is expected to employ stress tests as tools in its risk assessment process. The risk management policy sets out the frequency and content of these stress tests.

5.59. The regular risk-specific stress tests are tailored by the undertaking to its risk profile. To this purpose the undertaking has to identify possible short and long term risks and possible events or future changes in economic conditions that could have an unfavourable effect on its overall financial standing and determine their capital impact.

⁵Emerging risks are newly developing or changing risks which are difficult to quantify and which may have a major impact on the undertaking.

- 5.60. An undertaking may also make use of reverse stress testing, which identifies circumstances and that would threaten the viability of the undertaking, and describe the precautions it is taking.
- 5.61. The undertaking will have to choose adequate scenarios to serve as basis for its risk assessment process. The scenario analyses are based on an analysis of the worst (i.e. most severe but plausible) cases the undertaking could face and take into account any material second order effect that may arise. The risk management policy sets out the frequency and content of these stress tests and scenario analyses.
- 5.62. Although each individual undertaking within a group is responsible for its risk management policy, a general steer is expected to be provided by the entity responsible for the fulfilment of the governance requirements at group level [(see Title II)]. In providing its steering, the entity responsible is expected to take into consideration the impact on and the compatibility with the individual undertaking's risk management strategies and policies bearing in mind possible discrepancies between the group perspective and local market specificities.

Guideline 17 – Risk management function: general tasks

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the risk management function to report to the administrative, management or supervisory body on risks that have been identified as potentially material. The risk management function should also report on other specific areas of risks both on its own initiative and following requests from the administrative, management or supervisory body.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that the risk policy is implemented consistently across the group.

Guideline 18 – Underwriting and reserving risk management policy

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in its risk management policy, the undertaking covers at least the following with regard to underwriting and reserving risk:

the types and characteristics of the insurance business, such as the type of insurance risk the undertaking is willing to accept;

how the adequacy of premium income to cover expected claims and expenses is to be ensured;

the identification of the risks arising from the undertaking's insurance obligations, including embedded options and guaranteed surrender values in its products;

how, in the process of designing a new insurance product and the premium calculation, the undertaking takes account of the constraints related to investments; and

how, in the process of designing a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.

5.63. Where appropriate, the policy for underwriting and reserving risk may also include:

- a) the maximum acceptable exposure to specific risk concentrations;
- b) internal underwriting limits for the various products or classes; and
- c) considerations regarding reinsurance and other risk mitigation strategies and their effectiveness.

- 5.64. The undertaking ensures that all policies and procedures established for underwriting are applied by all distribution channels of the undertaking.
- 5.65. The undertaking needs to take into account the constraints related to investments in the design of new products. For example:
- a) an undertaking planning to sell a new life product with a minimum guaranteed rate has to take into account the return available on the market.
 - b) an undertaking planning to sell a new Property and Casualty contract has to take into account the liquidity constraints that could be linked to the contract.

Guideline 19 – Operational risk management policy

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in the risk management policy, the undertaking covers at least the following with regard to operational risk:

- a) Identification of the operational risks it is or might be exposed to and assessment of the way to mitigate them;**
- b) activities and internal processes for managing operational risks, including the IT system supporting them; and**
- c) risk tolerance limits with respect to the undertaking's main operational risk areas.**

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that the undertaking has processes to identify, analyse and report on operational risk events. For this purpose, it should establish a process for collecting and monitoring operational risk events.

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that for the purposes of operational risk management, the undertaking develops and analyses an appropriate set of operational risk scenarios based on at least the following approaches:

- a) the failure of a key process, personnel or system; and**
- b) the occurrence of external events.**

- 5.66. As operational risk is typically harder to identify and assess than other types of risks, it is even more important for the undertaking to have a conscious approach to it in its overall risk management. As some of the risk comes from the undertaking itself (e.g. inadequate or failed internal processes, personnel or systems), the undertaking plays a role in the occurrence and unfolding of operational risks. This is also partly true for operational risks having an external event for a cause.

- 5.67. It is important to note that because operational risks tend to interact with the other risk types they will not be assessed in isolation, but rather be considered alongside the assessment of the other risk types.
- 5.68. Operational risk may materialize through personnel execution errors, frauds, and processing failures as well as through the direct and indirect consequences of natural or man-made disasters such as terrorist attacks, fire, flood, earthquake and pandemics. These natural or man-made disasters are the high impact-low frequency type of operational risks which need to be considered when looking at scenario analysis. As their impact may be potentially catastrophic, the undertaking pays particular attention to them and develops early warning systems that allow for an effective and timely intervention.
- 5.69. For the development of scenarios, the undertaking takes into account that the different types of operational risk that are defined in article 13(33) of Solvency II are not strictly separated and that using the two starting points (start from a failure of internal process, system or personnel on one hand or external causes on the other hand) to develop the scenario set will give better chances to have a more comprehensive list of relevant scenarios. Very severe and unlikely but not impossible scenarios must also be considered.
- 5.70. To perform this analysis the undertaking can use pre-defined categories of operational risks and lists of its key processes. However, each undertaking is free to define a categorisation that better suits its specificities.
- 5.71. The analysis of stress tests and scenarios for the operational risk framework might differ from other types of stress or scenario analysis (e.g. financial), as the definition of the different stages of the scenario (cause, failure of process, impacts) will be a key element of the analysis and monitoring of the risks. The main reason for this is that the controls and corrective measures that the undertaking will put in place will have an effect on the scenario itself.
- 5.72. In the case of operational risk, prevention and corrective actions take precedence over the precise measure. Identifying operational risks is very closely linked to prevention, mitigation and corrective measures.
- 5.73. The continuous monitoring and control of operational risks implies that all personnel are aware of the importance of this type of risk.
- 5.74. The controls and mitigation actions need to be reviewed periodically taking into account the evolution of the operational risk and knowledge of operational risk evolutions.
- 5.75. Examples of mitigation actions are:
- a) insurance (liability insurance, key person insurance, fire insurance, etc.);
 - b) automation of processes; and

c) back up of data.

5.76. The undertaking is also expected to put in place key risk indicators.

5.77. For the purposes of operational risk events analysis, an undertaking may also consider how external data could supplement its collection of internal operational risk events data to produce more reliable estimates of operational risk events.

5.78. On each concerned event, at least the following information is needed:

- a) The cause of the event;
- b) The consequences of the event; and
- c) The actions taken or not on account of the event.

5.79. When defining the perimeter (e.g. materiality threshold) of the events that will be collected, the undertaking would have to keep in mind that:

- a) Operational risk can be both related to high frequency/low severity events or to low frequency/high impact events; and
- b) Some events that have had no negative impact (e.g. near misses) may be very useful to be analysed to monitor more material operational risks.

Guideline 20 – Control and documentation of risk-mitigation techniques

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that for the purposes of proper use of reinsurance and other risk mitigation techniques the undertaking analyses, assesses and documents the effectiveness of all risk mitigation techniques employed.

Guideline 21 – Reinsurance and other risk-mitigation techniques – risk management policy

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in the risk management policy the undertaking covers at least the following with regard to risk mitigation techniques:

- a) **identification of the level of risk transfer appropriate to the undertaking's defined risk limits and which kind of reinsurance arrangements are most appropriate considering the undertaking's risk profile;**
- b) **principles for the selection of such risk mitigation counterparties and procedures for assessing and**

monitoring the creditworthiness and diversification of reinsurance counterparties;

c) procedures for assessing the effective risk transfer and consideration of basis risk; and

d) liquidity management to deal with any timing mismatch between claims' payments and reinsurance recoverable.

5.80. The use of reinsurance and similar risk mitigation techniques constitute an ongoing process that may be used to keep the undertaking's risks within the scope of the approved risk tolerance limits. In using these techniques the undertaking has to consider the potential new risks they carry, such as the risk of counterparty default.

5.81. The undertaking develops a written analysis of the functioning and inherent material risks of the risk mitigation used. In particular, subject to the principle of proportionality, it will document the risks that can derive from the risk mitigation, the actions adopted to face such risks and the potential consequences of the risks (i.e. in a worst-case scenario).

Guideline 22 – Asset-liability management policy

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in its risk management policy the undertaking covers at least the following information with regard to asset-liability management:

a) a description of the procedure for identification and assessment of different natures of mismatches between assets and liabilities, at least with regard to terms and currency;

b) a description of mitigation techniques to be used and the expected effect of relevant risk-mitigating techniques on asset-liability management;

c) a description of deliberate mismatches permitted; and

d) a description of the underlying methodology and frequency of stress tests and scenario tests to be carried out.

5.82. Asset-liability management (ALM) is the management of a business in such a way that decisions on assets and liabilities are coordinated in order to manage the exposure to the risk associated with the variation of their economic values.

5.83. Along with the investment strategy, an ALM strategy describes how financial and insurance risks will be managed in an asset-liability framework in the short, medium and long term. Where appropriate the

investment strategy and the ALM-strategy could be integrated in a combined investment/ALM-strategy.

- 5.84. When choosing from the different ALM techniques available for measuring risk exposure, an undertaking relies on measurement tools that are consistent with the risk characteristics of the lines of business and its overall risk tolerance limits.
- 5.85. In order to provide for the effective management of assets and liabilities, the undertaking needs to ensure appropriate and continuing liaison between the different areas within its business involved in the ALM, such as off-balance sheet exposures or introduction of new products.
- 5.86. The management of the term structure of the portfolio is mainly done according to the term structure of the liabilities. A range of more or less sophisticated techniques can be used, e.g. duration, convexity, maturity buckets, according to the nature, size and complexity of the portfolio. Size is the factor that most limits the leeway on the management of term structure.

Guideline 23 – Investment risk management policy

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that in its risk management policy, the undertaking covers at least the following with regard to investments:

- a) the level of security, quality, liquidity, profitability and availability the undertaking is aiming for with regard to the whole portfolio of assets and how it plans to achieve this;**
- b) its quantitative limits on assets and exposures, including off-balance sheet exposures, that are to be established to help to ensure the undertaking achieves its desired level of security, quality, liquidity, profitability and availability for the portfolio;**
- c) consideration of the financial market environment;**
- d) the conditions under which the undertaking can pledge or lend assets;**
- e) the link between market risk and other risks in adverse scenarios;**
- f) the procedure for appropriately valuing and verifying the investment assets;**
- g) the procedures to monitor the performance of the investments and review the policy when necessary; and**
- h) how the assets are to be selected in the best interest of policyholders and beneficiaries.**

- 5.87. The risk management function evaluates whether the internal investment limits are appropriate in view of the undertaking's obligation to meet its liabilities and to comply with the requirements of Article 132(4) of Solvency II. For such purpose an appropriate number of stress tests are carried out on a regular basis.
- 5.88. The identification, measurement, monitoring, management and control of the investment risks inherent in the respective investment categories are carried out using suitable and acknowledged methods.
- 5.89. The undertaking has adequate internal control procedures in order to safeguard that the investment activity is properly reviewed and that transactions are always made under consideration of the investment principles and procedures approved by the AMSB; these control procedures must be aligned with the risks arising from investment activities. Such risks may include, but are not limited to, those risks involving coordination between front and back office, compliance with authorisations and trading limits, agreement of parties involved in a transaction, timely documentation of transactions, verification of quoted prices, traceability and tractability.
- 5.90. The risk management system has to put in place and monitor internal quantitative limits for each type of assets, including off-balance sheet exposures, considered eligible by the undertakings, per counterparty, geographical area or industry with the aim of managing risks in an appropriate manner and protecting the interests of policyholders.

Guideline 24 – Liquidity risk management policy

In accordance with Article 44 of Solvency II Directive, national competent authorities should ensure that in its risk management policy, the undertaking covers at least the following items with regard to liquidity risk:

- a) the procedure for determining the level of mismatch between the cash inflows and the cash outflows of both assets and liabilities, including expected cash flows of direct insurance and reinsurance such as claims, lapses or surrenders;**
- b) consideration of total liquidity needs in the short and medium term, including an appropriate liquidity buffer to guard against a liquidity shortfall;**
- c) consideration of the level and monitoring of liquid assets, including a quantification of potential costs or financial losses arising from an enforced realisation;**
- d) identification and costs of alternative financing tools; and**
- e) consideration of the effect on the liquidity situation of expected new business.**

- 5.91. The purpose of liquidity risk management is to ensure that obligations to policyholders can be met whenever they fall due. The required degree of liquidity in the investment portfolio can differ amongst undertakings according to the nature of the insurance business, especially the possibility to foresee the amount and the time of the insurance payments.
- 5.92. An appropriate buffer for liquidity shortfalls is understood as having enough liquid assets and not as holding additional capital.
- 5.93. Short term liquidity, or cash management, includes the day-to-day cash requirements under normal business conditions. Liquidity considerations over the long term need to be assessed in a way which takes into consideration the possibility of various unexpected and potentially adverse business conditions where asset values may not be realised for current market values, including situations where accelerated sales of assets reduce expected returns. There are also liquidity considerations that arise from policyholder behaviour, such as unexpected or accelerated payments to policyholders as a result of surrenders, large claims, or the exercise of policy options.
- 5.94. At group level, the management of liquidity risk needs to be adequately supported by clear agreements governing the usage of excess funds, supervision of each entity's financial position and regular stress and transferability testing.

Chapter III: The "prudent person" principle and the system of governance

Guideline 25 – Investment risk management

In accordance with Article 132 of Solvency II Directive, national competent authorities should ensure that the undertaking does not solely depend on the information provided by third parties, such as financial institutions, asset managers and rating agencies. In particular, the undertaking should develop its own set of key risk indicators in line with its investment risk management policy and business strategy.

In making its investment decisions, the undertaking should take into account the risks associated with the investments without relying only on the risk being adequately captured by the capital requirements.

- 5.95. The Guideline basically refers to the underlying prudent person principle for managing investments. This principle has the following characteristics:
- a) Due diligence and process: The prudent person principle is as much a behavioural standard as an assessment of judgments and investment decisions. Prudence is to be found in the process by which investment strategies are developed, adopted, implemented, and monitored in

light of the purposes for which funds are managed, as well as in the outcomes.

- b) Care, skill and delegation: The undertaking, while performing investment management must have an adequate understanding of the risks associated with its investments, its risk management policy, the necessary level of “familiarity” with the liability and regulatory constraints to appropriately carry out its responsibilities. Similarly, the undertaking must have or acquire the care and skill sufficient to the tasks of investment management for which it is responsible. To obtain a sufficient level of skills satisfying the prudent person principle, the undertaking may obtain advice from relevant experts and delegate various activities to those with the requisite skill. When employing an expert,
 - i) the undertaking is responsible for assuring that the expert actually has the skills for which he or she is being employed and, therefore, will adequately investigate the expert’s qualifications and experience.
 - ii) the undertaking also ensures that employed experts acquire sufficient familiarity with the specific nature and needs of the managed portfolios by providing them with complete, accurate and sufficient information so that they can appropriately formulate requested advice or carry out delegated tasks.
 - iii) the undertaking assesses whether the hired parties have any conflicts of interest that could provide inappropriate incentives to act contrary to its interests.
- c) Duty to monitor: Even when delegating tasks, the undertaking remains responsible for monitoring and reviewing the activities delegated to assure that they have been appropriately and prudently carried out. This would include the monitoring and reviewing of investment managers based upon the investment risk section of the risk management policy and review procedure.
- d) Duty to protect policy holders and beneficiaries interest: The undertaking protects the policy holders’ and beneficiaries’ interests considering that risks such as legal risk, reputation risks, commercial risks, and operational risks resulting from a lack of care may also impair its solvency. A special emphasis on this point is made on unit-linked business.
- e) Principle of diversification: The investments in portfolios managed by the undertakings are suitably diversified. It requires both diversification among appropriate asset classes and within each asset classification, in order to avoid the unwarranted concentration of investment and the associated accumulation of risk in the portfolios.

5.96. Each portfolio contains investment related risks which can endanger the solvency position. The undertaking must be able to identify measure, monitor, manage and control these risks. The composition of the pool of

investment assets is at any time the result of a well-structured, disciplined and transparent investment process which consists of the following components:

- a) the implementation of the investment risk section of the risk management policy by an investment management with the appropriate skills and resources;
- b) continuous independent control of the investment activity by the employees entrusted with this task by comprehensive and, precise systems for identifying, measuring, monitoring, managing and controlling the investment risks and their aggregation on different levels;
- c) appropriate procedures for the measurement and evaluation of the investment result; and
- d) appropriate reporting procedures.

5.97. The qualitative features of security, quality, liquidity and profitability apply to the portfolio as a whole and not to individual investments. Hence, undertakings may have individual investments that do not fulfil every qualitative feature even if they will finally contribute to the security, quality, liquidity and profitability of the portfolio as a whole.

5.98. In order for these qualitative features to provide a real benchmark against which compliance can be assessed, it needs to be specified to what extent individual investments do not necessarily have to meet all these qualitative features. Assets that do not fulfil every qualitative feature must be kept at prudent levels.

Guideline 26 – Assessment of non-routine investment activities

In accordance with Article 132 of Solvency II Directive, national competent authorities should ensure that before performing any investment or investment activity of a non-routine nature the undertaking carries out an assessment of at least:

- a) its ability to perform and manage the investment or the investment activity;**
- b) the risks specifically related to the investment or the investment activity and the impact of the investment or the investment activity on the undertaking's risk profile;**
- c) the consistency of the investment or investment activity with the beneficiaries' and policyholders' interest, liability constraints set by the undertaking and efficient portfolio management; and**
- d) the impact of this investment or investment activity on the quality, security, liquidity, profitability and availability of the whole portfolio.**

In accordance with Article 132 of Solvency II Directive, national

competent authorities should ensure that the undertaking has procedures that require that where such investment or investment activity entails a significant risk or change in the risk profile, the undertaking's risk management function communicates such a risk or change in the risk profile to the administrative, management or supervisory body of the undertaking.

- 5.99. A not routinely employed investment or investment activity, such as a large or complex investment, is one that the undertaking does not perform on a regular basis and which is therefore out of the ordinary. The use of derivatives may not be exceptional as such but is considered non-regular as derivatives have to be tailored in each case to serve a specific purpose.
- 5.100. Investment activity means any action related to investment management (e.g.: sale of call options, security lending, issuance of an instrument).
- 5.101. The impact on the quality, security, liquidity profitability and availability of the whole portfolio has to be such that it improves the characteristics of the portfolio and does not deteriorate significantly one characteristic.
- 5.102. Where the investment or investment activity entails a significant risk or change in the risk profile, this will lead to the requirement to perform a new forward looking assessment of the undertaking's own risk (based on the ORSA principles).

Guideline 27 – Unit-linked and index-linked contracts

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the investments of unit-linked and index-linked contracts of the undertaking are selected in the best interest of policyholders and beneficiaries taking into account any disclosed policy objectives.

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that, in the case of unit-linked business, the undertaking takes into account and manages the constraints related to unit-linked contracts, in particular liquidity constraints.

- 5.103. In relation to unit-linked contracts, the undertaking is expected to consider the liquidity risk with reference to its liabilities arising from the obligations and representations to policyholders and beneficiaries. In particular this includes the assessment of the ability for policyholders and beneficiaries to redeem their unit-linked investments, taking into account the immediacy with which they must discharge their obligations (i.e. the notice period).

- 5.104. The operation of unit-linked and index-linked contracts requires for ALM reasons that the underlying assets of the contracts are sufficiently liquid that the purchase and sales of those assets can be realised consistently with the premium payment and redemptions on the contracts.
- 5.105. If it is not possible to sell particular assets in time or at a fair price to meet surrender payments, the undertaking needs to consider the interests of the remaining unit holders and whether there is a need to sell other liquid assets. A consequential risk is that the residual investment portfolio of the fund becomes unbalanced, in a way that it no longer conforms to the investment mandate and/or the risk profile disclosed to policyholders. The undertaking therefore needs to take into account the broader impact on the linked fund or portfolio.
- 5.106. The undertaking needs to ensure that no additional risk results from the unit-linked contracts in a way that could hurt other policyholders and beneficiaries, e.g. when the undertaking uses derivatives to limit the maximum possible loss.

Guideline 28 – Assets not admitted for trading on a regulated financial market

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking implements, manages, monitors and controls procedures in relation to investments that are not admitted to trading on a regulated financial market or to complex products, which are difficult to value.

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking treats assets admitted to trading, but not traded or traded on a non-regular basis, similarly to those assets not admitted to trading on a regulated financial market.

- 5.107. Where mark-to-model valuation is applied, the risk management function is responsible for model sign-off and review, independent price verification and stress-testing, as well as for internal control processes. On a regular basis, the undertaking is expected to assess the need to develop back-up valuation models for complex or potentially illiquid instruments. These methods and models have to be benchmarked, extrapolated or otherwise calculated as far as possible from market inputs. The undertaking is expected to maximise the use of relevant observable inputs and minimise the use of unobservable inputs.
- 5.108. The undertaking is expected to have access to appropriate expertise in order to understand, manage and monitor structured products and their embedded risks. Also, the undertaking needs procedures to evaluate the specific risks associated with these products, especially new concentration risks that may not be obvious.

Guideline 29 – Derivatives

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking, when it uses derivatives, implements the procedures in line with its risk management policy on investments to monitor the performance of these derivatives.

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that the undertaking demonstrates how the quality, security, liquidity or profitability of the portfolio is improved without significant impairment of any of these features where derivatives are used to facilitate efficient portfolio management.

In accordance with Articles 44 and 132 of Solvency II Directive, 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.

- 5.109. With respect to assets other than those covered by Article 132 paragraph 3 of Solvency II, derivatives are only allowed for the purposes of efficient portfolio management or the reduction of risks.
- 5.110. When the undertaking uses derivative products or any other financial instrument with similar characteristics or effects, it needs to put in place procedures to evaluate the strategy to use these types of products and the principles of risk management to be applied to them.
- 5.111. Where the undertaking uses derivatives that can generate losses significantly above the amount initially committed, such as the sale of a call, it is expected to assess the resulting structure of the whole portfolio whether it does create a situation where the possible loss could be unlimited or excessive with regard to the portfolio constraints.
- 5.112. The use of derivative as a hedging tool is expected to be done in a way that does not create any additional risks that have not been assessed previously.
- 5.113. Examples where derivatives are used for hedging and would create new risks:
- a) If the undertaking invests in a mutual fund in which the foreign currency risk is hedged (in the mutual fund) by a derivative with a margin call and the covered assets are not liquid, it can create a liquidity risk in the mutual fund even though economically the risk is hedged;

- b) If the undertaking wants to hedge a security with a negative value using a collar, it can create risks in the income statement even though economically the risk of an asset impairing is hedged; and
- c) If the undertaking wants to hedge against a rise in interest rates, it may buy caps from investment banks, which can create an increased counterparty risk even though economically the risk is hedged.

5.114. With respect to assets covered by Article 132 paragraph 3 of Solvency II, derivatives may also be used as an investment strategy.

Guideline 30 – Securitised instruments

In accordance with Articles 44 and 132 of Solvency II Directive, national competent authorities should ensure that, where the undertaking invests in securitised instruments, it ensures that its interests and the interests of the originator or sponsor concerning the securitised assets are well understood and aligned.

- 5.115. The undertaking ensures that the originator does not conclude deals solely because it expects to have essentially a brokerage activity on these deals.
- 5.116. The undertaking has a clear vision of the purpose followed by the originator, in particular the undertaking ensures that, at least, the assets are not securitised because the conditions on the market have become more risky for these assets.
- 5.117. Below are possible actions the undertaking could take to ensure that the alignment is in place, it could:
- a) perform due diligence including a risk analysis of the proposed securitised investments;
 - b) ensure that the originator has explicitly provided the undertaking with the documentation governing the investment that the originator will retain, on an ongoing basis a net economic interest which, in any event, should not be less than a relevant and pre-determined share;
 - c) ensure that the originator meets the following criteria: the originator or, where appropriate, the sponsor finances the transaction, based on sound and well-defined criteria, and clearly establishes the process for approving, amending, renewing and refinancing assets securitised to exposures to be securitised if they apply to exposures which are not currently securitised;
 - d) check that the originator or, where appropriate, the sponsor has in place effective systems to manage the on-going administration and monitoring of its assets, risk-bearing portfolios and exposures;

- e) check that the originator or, where appropriate, the sponsor adequately diversifies each asset portfolio based on its target market and overall credit strategy;
- f) ensure that the originator or, where appropriate, the sponsor makes readily available access to all relevant data necessary for the undertaking to comply with any legal requirements set;
- g) check that the originator or, where appropriate, the sponsor has a written policy on asset risk that includes its risk appetite and provisioning policy and how it measures, monitors and controls that risk;
- h) ensure that the originator or, where appropriate, the sponsor discloses the level of its retained net economic interest as well as any matters that could undermine the maintenance of the minimum required net economic interest.

Chapter IV: Own fund requirements and the system of governance

Guideline 31 – Capital Management Policy

In accordance with Article 41 and 93 of Solvency II Directive, national competent authorities should ensure that the undertaking should be developing a capital management policy which includes:

- a. a description of the procedure to ensure that own fund items, both at issue and subsequently, meet the requirements of the applicable capital and distribution regime and are classified correctly where the applicable regime requires;
- b. a description of the procedure to monitor the issuance of own fund items according to the medium term capital management plan;
- c. a description of the procedure to ensure that the terms and conditions of any own fund item are clear and unambiguous in relation to the criteria of the applicable capital regime; and
- d. a description of the procedures to
 - i. ensure that any policy or statement in respect of ordinary share dividends is taken into account in consideration of the capital position; and
 - ii. identify and document instances in which distributions on an own funds item are expected to be deferred or cancelled.

Guideline 32 – Medium-term Capital Management Plan

In accordance with Article 41 and 93 of Solvency II Directive,

national competent authorities should ensure that the undertaking is developing a medium-term capital management plan which is to be monitored by the administrative, management or supervisory body of the undertaking and which includes at least considerations of:

- a. any planned capital issuance;**
- b. the maturity, incorporating both the contractual maturity and any earlier opportunity to repay or redeem, relating to the undertaking's own fund items;**
- c. how any issuance, redemption or repayment of, or other variation in the valuation of, an own funds item affects the application of any limits in the applicable capital regime; and**
- d. the application of the distribution policy.**

In accordance with Article 41 and 93 of Solvency II Directive, national competent authorities should ensure that the undertaking takes into account in the capital management plan the output from the risk management system and the forward looking assessment of own risks (based on the ORSA principles).

Chapter V: Internal Controls

Guideline 33 – Internal Control environment

In accordance with Article 46 of Solvency II Directive, national competent authorities should ensure that the undertaking promotes the importance of performing appropriate internal controls by ensuring that all personnel are aware of their role in the internal control system. The control activities should be commensurate to the risks arising from the activities and processes to be controlled.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures a consistent implementation of the internal control systems across the group.

5.118. Internal control combines the following aspects:

- a) internal control environment
- b) internal control activities
- c) communication
- d) monitoring

- 5.119. A high level of integrity is an essential part of the control environment. In reinforcing integrity, the undertaking needs to avoid policies and practices that may provide incentives for inappropriate activities. The undertaking needs to ensure staff are not only fully aware of the internal control system but that they understand their role within it. This ensures the system is fully embedded within the undertaking's culture.

Guideline 34 – Monitoring and reporting

In accordance with Article 46 of Solvency II Directive, national competent authorities should ensure that the undertaking establishes that the monitoring and reporting mechanisms within the internal control system provide the administrative, management or supervisory body with the relevant information for the decision-making processes.

- 5.120. The reporting of the achievement of the main goals and material risks inherent in the business is predefined.
- 5.121. Quality reports, timely reporting, accuracy, completeness and suggestions for improvements are encouraged.
- 5.122. Internal communication lines need to encourage the reporting of negative news, particularly when communicated to superiors, to avoid employees suppressing negative information and permit short cut across reporting lines in case the situation calls for such action.
- 5.123. Monitoring mechanisms include procedures to detect deficiencies.
- 5.124. Regular monitoring occurs in the course of normal operations and includes on-going management activities and actions taken by all personnel when performing their duties.

Chapter VI: Internal audit function

Guideline 35 – Independence

In accordance with Article 47 of Solvency II Directive, national competent authorities should ensure that the undertaking provides that when performing an audit and when evaluating and reporting the audit results, the internal audit function is not subject to influence from the administrative, management or supervisory body that can impair its independence and impartiality.

- 5.125. Internal audit is an independent function established within the undertaking to examine and evaluate the functioning, effectiveness and efficiency of the internal control system and all other elements of the system of governance. Internal audit assists members of the AMSB in their duty to have an adequate and effective internal control system in

place. Internal audit provides the AMSB with analysis, appraisals, recommendations and information concerning the activities reviewed.

- 5.126. Certain undertakings have established separate functions in charge of controlling or monitoring a specific activity or entity of the undertaking. Such functions are part of the internal control system and therefore do not release the internal audit from examining those specific activities or entities. However, for the sake of efficiency, the internal audit may, in carrying out its tasks, use the information reported by the various functions. The independence of the internal audit function implies that it is given an appropriate standing within the organization and carries out its assignments without undue interferences and with impartiality.
- 5.127. The AMSB can request that specific areas are included in the internal audit without impairing the independence of the internal audit function.

Guideline 36 – Internal audit policy

In accordance with Articles 41 and 47 of Solvency II Directive, national competent authorities should ensure that the undertaking has an internal audit policy which covers at least the following areas:

- a. the terms and conditions according to which the internal audit function can be called upon to give its opinion or assistance or to carry out other special tasks;**
- b. where appropriate, internal rules setting out the procedures the person responsible for the internal audit function needs to follow before informing the supervisory authority; and**
- c. where appropriate, the criteria for the rotation of staff assignments.**

In accordance with Articles 41 and 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that the audit policy at the level of the group describes how the internal audit function:

- a. coordinates the internal audit activity across the group; and**
- b. ensures compliance with the internal audit requirements at the group level.**

- 5.128. The policy is drawn up by the internal audit function and approved by the AMSB.

Guideline 37 – Internal audit function tasks

In accordance with Article 47 of Solvency II Directive, national competent authorities should ensure that the undertaking requires that the internal audit function, at least:

- a. to establish, implement and maintain an audit plan setting out the audit work to be undertaken in the upcoming years, taking into account all activities and the complete system of governance of the undertaking;
- b. to take a risk-based approach in deciding its priorities;
- c. to report the audit plan to the administrative, management or supervisory body of the undertaking;
- d. to issue an internal audit report to the AMSB based on the result of work carried out in accordance with point (a), which includes findings and recommendations, including the envisaged period of time to remedy the shortcomings and the persons responsible for doing so, and information on the achievement of audit recommendations;
- e. to submit the internal audit report to the administrative, management or supervisory body on at least an annual basis; and
- f. to verify compliance with the decisions taken by the administrative, management or supervisory body on the basis of those recommendations referred to in point (d).

In accordance with Article 47 of Solvency II Directive, national competent authorities should ensure that where necessary, the undertaking provides that the internal audit function may carry out audits which are not included in the audit plan.

- 5.129. Each assignment is adequately prepared. Its objectives as well as an outline of the work that is considered necessary to attain is described in an audit program.
- 5.130. A written report of each assignment is issued as quickly as possible.
- 5.131. It is transmitted to the auditee and the auditee's hierarchy and - possibly as an executive summary - to the AMSB.
- 5.132. The internal audit function indicates the relative importance of the deficiencies found or recommendations made.
- 5.133. The report covers at least any deficiencies with regard to the efficiency and suitability of the internal control system, as well as major shortcomings with regard to the compliance with internal policies, procedures and processes. It includes recommendations on how to remedy inadequacies and also specifically addresses how past points of criticism and past recommendations have been followed up.
- 5.134. The internal audit function develops appropriate procedures to verify the manner how the recommendations are implemented.

- 5.135. As part of its supervisory task, the AMSB body is expected to regularly discuss the organisation, audit plan, audit programme, adequacy of resources to ensure the proper performance of the activities of the internal audit function and summary of recommendations and their implementation.

Chapter VI: Actuarial Function

Guideline 38 – Tasks of the actuarial function

In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking takes appropriate measures to address the potential conflicts of interests, if the undertaking decides to add additional tasks or activities to the tasks and activities of the actuarial function.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity requires that the actuarial function gives an opinion on the reinsurance policy and the reinsurance program for the group as a whole.

- 5.136. One of the tasks of the actuarial function is the coordination of the calculation of technical provisions. This task, as defined in Solvency II, does not explicitly include the actual calculations of the technical provisions. Who should perform the calculation of the technical provisions is left to each undertaking to decide, provided that there is a clear allocation and appropriate segregation of responsibilities to ensure independent scrutiny and validation of the calculation. In cases where both calculation and validation of technical provisions is done by the actuarial function, the undertaking should have in place processes and procedures in order to avoid conflicts of interest and ensure appropriate independence. The degree of segregation of duties needs to be proportionate to the nature, scale and complexity of the risks inherent in the calculation of the technical provisions.
- 5.137. The undertaking needs to ensure and demonstrate that the processes of calculation and of validation of the technical provisions are independently performed.
- 5.138. The group actuarial function provides advice and an actuarial opinion on: underwriting risks of the group, asset-liability aspects, the group's solvency position, the groups prospective solvency position, such as stress tests and scenario tests in the area of technical provisions and ALM, distribution of dividends in relation to discretionary benefits, underwriting policies, reinsurance arrangements and other forms of risk transfer or risk mitigation techniques for insurance risks. Also advice is given on the adequacy, fairness of premiums and discretionary benefits,

or the methodology to determine the same, by the group actuarial function.

Guideline 39 – Coordination of the calculation of technical provisions

In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to identify any inconsistency with the requirements set out in Articles 76 to Article 85 of Solvency II Directive for the calculation of technical provisions and propose corrections as appropriate.

In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to explain any material effect of changes in data, methodologies or assumptions between valuation dates on the amount of technical provisions if already calculated on a Solvency II basis.

- 5.139. Both the task of ensuring the appropriateness of the methodologies and of the underlying models used, including the assumptions made in the calculation of technical provisions, and the assessment of the sufficiency and quality of the data used in the calculation of technical provisions are requirements of the coordination of the calculation.
- 5.140. In order to carry out this task, the actuarial function uses methodologies that allow for a complete analysis regarding those requirements.
- 5.141. The methodologies used to calculate the technical provisions should be validated, by validation tools such as back-testing against past experience, giving due considerations to changes over time.
- 5.142. The work required to ensure that an assumption is appropriate has to be proportionate to the impact of a variation in the assumption on the best estimate and to the materiality of the impact for the undertaking.

Guideline 40 – Data quality

In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to assess the consistency of the internal and external data used in the calculation of technical provisions against the data quality standards as set in Solvency II Directive. Where relevant, the actuarial function provides recommendations on internal procedures to improve data quality so as to ensure that the undertaking is in a position to comply with the related Solvency II requirement when implemented.

- 5.143. When assessing the appropriateness of the undertaking's segmentation of its insurance obligations into homogeneous risk groups, the actuarial function needs to take any data limitations into account. Limitations may include insufficient granularity and quantity of data.
- 5.144. The appropriate level of granularity is the level that allows the identification of trends affecting the different drivers of risk and ensures that there is sufficient data to enable the implementation of the methodologies and any statistical analysis.
- 5.145. The actuarial function has the task of consulting any relevant market data to perform the modelling of these liabilities and ensuring that these data are appropriately integrated into the model.
- 5.146. The actuarial function performs a process of comparison and validation of technical provisions based on experience and identifies solutions on how to deal with any material differences detected, which may imply revisions of assumptions and methodologies.

Guideline 41 – Underwriting policy and reinsurance arrangements
In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function, when providing its opinion on the underwriting policy and the reinsurance arrangements, to take into consideration the interrelations between these and the technical provisions.

- 5.147. Underwriting policy, reinsurance arrangements and technical provisions are interdependent actions according to the nature of an undertaking's business. Changes in underwriting policy and practice, for example, may not only affect the calculation of technical provisions, but also the adequacy of reinsurance arrangements. Consequently, the actuarial function is expected to identify any important interrelationships between underwriting policy, reinsurance and technical provisions when carrying out its responsibilities as described in Article 48 of Solvency II.
- 5.148. The skills and experience of the actuarial function can provide a different perspective from the underwriters' or reinsurance teams' perspectives. This perspective, when communicated to the administrative, management or supervisory body, will help to ensure that it is fully informed. The opinions on the underwriting policy and reinsurance arrangements include, when necessary, recommendations regarding appropriate strategies to be followed by the undertaking in this matter.
- 5.149. The opinion on the overall underwriting policy may include amongst others the following issues:

- a) whether the product pricing is consistent with the underwriting policy for acceptance of risks;
- b) an opinion on the principal risk factors influencing the profitability of business to be written during the next year, including the potential impact on future profitability of external factors such as inflation, legal risk, changes in business volumes and changes in the market environment;
- c) an opinion on the likely financial impact of any material planned changes in terms and conditions of contracts;
- d) the degree of variability surrounding the estimate of expected profitability; and
- e) the consistency of this degree of variability with the risk appetite of the undertaking.

5.150. Commenting on the overall underwriting policy does not require expressing views on every single policy, but rather on the undertaking's underwriting in general. The scope of the view expressed is determined by what is relevant information for the administrative, management or supervisory body in reviewing the undertaking's underwriting policies.

5.151. The opinion on the adequacy of the undertaking's reinsurance arrangements may include amongst others the following issues:

- a) the consistency of the undertaking's reinsurance arrangements with its risk appetite;
- b) the effect of reinsurance on the estimation of technical provisions net of reinsurance recoverables; and
- c) an indication of the effectiveness of the undertaking's reinsurance arrangements in mitigating the volatility of its own funds.

5.152. The opinion on the adequacy of reinsurance arrangements needs to include an assessment of how the reinsurance coverage could respond under a number of stressed scenarios. These scenarios may include situations such as the following: exposure of the undertaking's portfolio of business to catastrophic claims experience, aggregations of risks, reinsurance defaults and potential reinsurance exhaustion.

5.153. The actuarial function provides information to the administrative, management or supervisory body to enable it to take decisions concerning the underwriting policy and reinsurance arrangements. The opinions of the actuarial function on the overall underwriting policy and reinsurance arrangements need to include descriptions and examinations of other possible options.

<p>Guideline 42 – The actuarial function of an undertaking with an internal model under pre-application</p>
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In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that, during the pre-application process, the undertaking requires the actuarial function to contribute to specifying which risks within their domain of expertise are covered by the internal model. The actuarial function should also contribute to how dependencies between these risks and dependencies between these risks and other risks are derived. This contribution is based on a technical analysis and should reflect the experience and expertise of the function.

- 5.154. Article 44 (5) of Solvency II sets out that the risk management function is responsible for a number of areas of the internal model. Despite the fact that the risk management function is responsible for the design, implementation, testing and validation of the internal model, it is expected that the actuarial function assists in these tasks. The assistance of the actuarial function in the internal modelling is desirable also because of the close connection and consistency between the valuation of the assets, liabilities and the calculation of the loss Probability Distribution Forecast (PDF). During the calculation of the SCR, amongst others, the uncertainties of the technical provisions are measured, via life underwriting risk module, non-life underwriting risk module.
- 5.155. The design of the internal model is a task that is performed with the contribution provided by the actuarial function, for instance, regarding the scope of the internal model and the complexity of the model.
- 5.156. The level of data quality that is required to perform the modelling of the different risks is a particular factor that needs to be taken into consideration. The actuarial function, as responsible for the analysis of the sufficiency and the quality of the internal and external data to be used in the calculation of technical provisions, is in a position to express an opinion on whether it is appropriate to explore a specific area of modelling in the framework of the internal model, regarding the limitations of data that may apply.
- 5.157. The actuarial function, following its task of coordination of the calculation of technical provisions, assists the risk management function in defining the level of technical complexity that should be associated with the model. The level of complexity will depend, for instance, on the level of completeness of the data, the nature and complexity of the risks and its importance among the other risks.
- 5.158. The assistance of the actuarial function to risk management is particularly important in the modelling of underwriting risks and it is necessary to ensure consistency between the assumptions set to calculate technical provisions and the assumptions inherent to the calculation of the solvency capital requirement.
- 5.159. The actuarial function also has a role in the implementation of the internal model and may also be a user of it. The outputs of the internal

model are used by the actuarial function to support the analyses carried out by the function.

- 5.160. In the process of the internal model's implementation, the mutual communication between the actuarial function and the risk management function is needed that both functions insights in the internal model gained by the two functions are shared between them. This feedback could lead to the detection of shortcomings and to proposals on how to improve the model.
- 5.161. Parts of the validation tasks may include collecting and analysing information, for example providing an analysis of the actual experience against expected experience. It may be that there are systems in place within the sphere of responsibility of the actuarial function which have already been set up to collect this information.
- 5.162. In this case it may be sensible for the actuarial function to be involved in performing some of the tasks in the validation process so the undertaking can streamline processes and facilitate an efficient allocation of tasks.

Guideline 43 – Actuarial reporting to the administrative, management or supervisory body

In accordance with Article 48 of Solvency II Directive, national competent authorities should ensure that the undertaking requires the actuarial function to report in writing at least annually to the administrative, management or supervisory body. The reporting should document all material tasks that have been undertaken by the actuarial functions, their results, clearly identifying any deficiencies and giving recommendations as to how such deficiencies could be remedied.

- 5.163. There may be deficiencies in the specific tasks carried out by the actuarial function, as set out in Article 48 of Solvency II. Such deficiencies identified may relate to data, technical procedures, methodologies or to knowledge or expertise.
- 5.164. Reporting to the AMSB does not require that all material tasks and their results are addressed in one written report. The actuarial function can cover the topics it needs to address in different written reports and submit them to the AMSB at different times as long as each relevant topic is dealt with at least annually.
- 5.165. If there is any material uncertainty about the accuracy of the data, the actuarial function report needs to:
- a) describe the uncertainty; and
 - b) explain any approach taken in light of the uncertainty in the calculation of technical provisions.

5.166. In some specific areas, which usually require a higher complexity of the modelling, shortcomings of knowledge or expertise of the personnel may be experienced. This may also be a consequence of the development of new complex products, some for instance with embedded options and guarantees, where difficulties may arise with regard to understanding and predicting the behaviour of assets and liabilities affected by a wide set of risk drivers as well as their interdependencies.

Chapter VII: Outsourcing

5.167. A service provider is a third party and may be a supervised entity, an entity from the same group as the undertaking or not and it may be located inside the EU as well as outside.

5.168. In principle, any functions and activities of an undertaking can be outsourced, but the AMSB retains ultimate responsibility for discharging its obligations.

5.169. While an outsourcing arrangement may be performed directly by the service provider, the service provider may sub-outsource to another provider if this is permitted by the contract agreed with the undertaking. While an undertaking will not be a party to the sub-outsourcing agreement, it ensures that it is informed by the service provider of any sub-outsourcing, because the undertaking remains fully responsible for the activity or function outsourced and must ensure the service provided is satisfactorily performed.

5.170. An undertaking needs to decide whether an arrangement falls within the definition of outsourcing. Generally, for example, where an undertaking provides insurance services to its policyholders and certain elements of the delivery of those services are contracted to a third party, the arrangement is likely to be an outsourcing unless the policyholder has a direct contractual relationship with the third party for the delivery of those services. Any reliance on a third party for functions enabling the undertaking to provide those insurance services is also likely to be outsourcing.

5.171. However, not every provision of a function or service to an undertaking by a service provider will fall within the definition of outsourcing. Hiring a specialist consultant, for example, to provide one-off technical advice or one-off support for an undertaking's compliance, internal audit, accounting, risk management or actuarial functions does not normally constitute outsourcing. However, it may become outsourcing if an undertaking subsequently relies on that consultant to manage an internal function or service, e.g. when it is installed or becomes fully operational.

5.172. While it is not possible to determine a bright line it can be expected that, in broad terms, the more substantial or frequent the advice or service provided by a third party for an undertaking is, the more likely it is to fall within the definition of outsourcing.

Guideline 44 – Critical or important operational functions and activities

In accordance with Article 49 of Solvency II Directive, national competent authorities should ensure that the undertaking determines and documents whether the outsourced function or activity is a critical or important function or activity on the basis of whether this function or activity is essential to the operation of the undertaking as it would be unable to deliver its services to policyholders without the function or activity.

5.173. In determining whether an outsourced function or activity is critical or important the undertaking has to take into account any definition or list of such functions or activities provided under national law or national administrative interpretation. Where functions or activities are partially outsourced it is relevant whether these outsourced parts are per se critical or important.

5.174. Examples of critical or important functions or activities include:

- a) the design and pricing of insurance products;
- b) the investment of assets or portfolio management;
- c) claims handling;
- d) the provision of regular or constant compliance, internal audit, accounting, risk management or actuarial support;
- e) the provision of data storage;
- f) the provision of on-going, day-to-day systems maintenance or support; and
- g) the ORSA process.

5.175. The following activities cannot be considered critical or important operational functions or activities:

- a) the provision of advisory services to the undertaking, and other services which do not form part of the undertaking's insurance or reinsurance activities, such as legal advice, the training of personnel and the security of premises and personnel;
- b) the purchase of standardised services, including market information services and the provision of price feeds;
- c) the provision of logistical support, such as cleaning or catering; and
- d) the provision of elements of human resources support, such as recruiting temporary employees and processing the payroll.

Guideline 45 – Underwriting

In accordance with Article 49 of Solvency II Directive, national competent authorities should ensure that, when an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an insurance undertaking, the undertaking ensures that the activity of this intermediary is subject to the outsourcing requirements.

- 5.176. Underwriting is a main activity of any insurance undertaking. As such, underwriting is a critical or important operational function or activity. It is common in most Member States to have insurance intermediaries involved in the underwriting process. These are subject to [Insurance Intermediaries Directive⁶ (IMD)]. However, where an insurance intermediary is mandated to write insurance business or to settle claims on behalf of the insurance undertaking, this is an outsourced service and, as such, the arrangement is caught by the Solvency II outsourcing requirements.
- 5.177. The typical intermediation activities of an insurance intermediary, i.e. introducing, proposing or carrying out other preparatory work for the conclusion of insurance contracts, or concluding such contracts, or assisting in the administration and performance of such contracts, in particular in the event of a claim, as set out in the IMD, these activities are not subject to the outsourcing requirements.
- 5.178. In the case of outsourcing of underwriting activities, the application of the outsourcing requirements needs to be analysed taking into consideration the specific requirements applicable under the IMD.

Guideline 46 – Intra-group outsourcing

In accordance with Article 49 of Solvency II Directive, national competent authorities should ensure that, if key functions are outsourced within the group, the responsible entity documents which functions relate to which legal entity and ensures that the performance of the key functions at the level of the undertaking is not impaired by such arrangements.

- 5.179. In case of intra-group outsourcing, the degree of flexibility may vary according to whether the service provider is, for example, in the same country as the undertaking or in a different geographical region.
- 5.180. Nevertheless, the undertaking needs to assess whether and to what extent it should rely on functions and activities provided by a service provider in its group.

⁶ *Official Journal L 009 , 15/01/2003 P. 0003*

- 5.181. A written agreement must always exist, stipulating the duties and responsibilities of both parties. However, this could assume the form of a service level agreement since the arrangement is probably not subject to formal negotiations (unlike an outsourcing to an external service provider).
- 5.182. While the supervisory review process may take into account a group as a whole and the extent to which an entity within the group provides a service or function for other undertakings in the same group, the obligations remain with the individual undertaking as it is the authorised entity. While an undertaking may assign to another group member the carrying out of services or functions, it cannot absolve itself of responsibility for them and still has to manage the outsourcing arrangement robustly with, for example, suitable business contingency plans.

Guideline 47 – Outsourcing written policy

In accordance with Article 49 and Article 41 of Solvency II Directive, national competent authorities should ensure that the undertaking that outsources or considers outsourcing covers in its policy the undertaking’s approach and processes for outsourcing from the inception to the end of the contract. This in particular includes:

- a. the criteria for determining whether a function or activity is critical or important;**
- b. how a service provider of suitable quality is selected and how and how often his performance and results are assessed;**
- c. the details to be included in the written agreement with the service provider; and**
- d. business contingency plans, including exit strategies for outsourced critical or important functions or activities.**

- 5.183. On (a), the policy sets out the due diligence process to be carried out prior to deciding on an outsourcing arrangement. The matters to be covered include the financial and technical ability of the service provider and its capacity to perform the outsourcing; its control framework; and any conflict of interests, e.g. between service provider and undertaking or arrangements with competitors.
- 5.184. On (b), the policy also needs to address the conditions under which sub-outsourcing by a service provider is possible. In any case, if the sub-outsourced function is critical or important for the undertaking the sub-outsourced service needs to be approved by the undertaking.

- 5.185. The examination of an applicant service provider allows the undertaking to understand the main risks that might arise from the outsourcing, to identify the most suitable strategies for the mitigation or management of these risks and to ensure that the service provider has the ability, capacity and any authorisation required by law to perform the outsourced activities reliably and professionally. The conclusions are to be documented and reviewed by the undertaking at any time it considers relevant.
- 5.186. On (c), irrespective of the service provider's governance obligation to establish suitable contingency plans for the function outsourced by the undertaking, the undertaking needs to consider in its own contingency planning how, if needed, the outsourced can be taken over by a new service provider, or bring it back in-house, as appropriate.
- 5.187. The undertaking's AMSB approves all outsourced services of critical or important functions or relevant activities and regularly receives review reports on the performance of these outsourcing arrangements when they are operational.
- 5.188. An undertaking remains fully responsible for all outsourced functions and activities so needs to include in its system of governance a process for monitoring and reviewing the quality of the service provided. It is not sufficient for the service provider itself to have internal controls and a risk management system that covers the services performed. In order to ensure effective control of outsourced activities and manage the risks associated with the outsourcing, the undertaking needs to maintain the competence and ability within the undertaking to assess whether the service provider delivers according to contract.
- 5.189. As part of good management practice, an undertaking is expected to effectively monitor whether its service provider is in compliance with all the terms of their written agreement. If the service provider does not effectively carry out the functions or activities in compliance with the terms of the outsourcing agreement, appropriate actions must be taken. If, for example, a service provider is unwilling to cooperate with the undertaking's supervisory authorities, the undertaking will have to terminate the outsourcing agreement. In this context, where a service provider is located outside the EU, the undertaking needs to pay particular attention to whether the service provider's regulator or local laws and regulations might restrict access to information about the outsourced activity or function or to the service provider's premises.

Section III: Group governance specific requirements

Guideline 48 – Responsible entity

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the parent insurance or reinsurance undertaking or insurance holding company identifies the responsible entity and reports it to the group supervisor.

- 5.190. The entity responsible for the fulfilment requirement at group level is usually the parent undertaking, but depending on the structure and organization of the group this entity may be other than the parent undertaking.

Guideline 49 – Responsibilities for setting internal governance requirements

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity sets adequate internal governance requirements across the group appropriate to the structure, business and risks of the group and of its related entities, and considers the appropriate structure and organization for risk management at group level, setting a clear allocation of responsibilities between all entities of the group.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity does not impair the responsibilities of the administrative, management or supervisory body of each entity in the group when setting up its own system of governance.

- 5.191. The entity responsible for fulfilling the governance requirements at group level is expected to verify that there is a clear allocation of responsibilities among all entities of the group to support an effective risk management process at group level.
- 5.192. Even if some or all of the governance requirements do not apply at the individual level for some entities belonging to an insurance group, namely holdings and other non-regulated entities, all governance requirements are applied to the coherent economic entity that in a holistic way aggregates all entities in the group (group level).

Guideline 50 – System of Governance at group level

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity:

- a. 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;**
- b. has in place reporting lines within the group and effective systems for ensuring information flows in the group bottom up and top-down as well;**
- c. documents and informs all the entities in the group about the tools used to identify, measure, monitor,**

manage and report all risks to which the group is exposed; and

- d. takes into account the interests of all the entities belonging to the group and how these interests contribute to the common purpose of the group as a whole over the long term.**

5.193. The AMSB of the entity responsible for fulfilling the governance requirements at group level assumes responsibility in terms of the establishment of group policies, review of the overall business activities, group strategies and policies. It understands not only the corporate organisation of the group but also the purpose of the group's different entities and the links and relationships among them. This includes understanding group-specific risks, intra-group transactions and how the group's funding, capital and risk profiles could be affected under normal and adverse circumstances.

5.194. The AMSB of the entity responsible for fulfilling the governance requirements at group level ensures that the different group entities, including the responsible entity, receive enough information for all of them to get a clear perception of the general aims and risks of the group. Any flow of significant information between entities relevant to the groups operational functioning should be documented and made accessible promptly, when requested, to the AMSB at group level, to the control functions and supervisors, as appropriate.

5.195. The AMSB of the entity responsible for fulfilling the governance requirements at group level ensures it keeps itself informed about the risks the groups' structure causes. This includes:

- a) information on major risk drivers; and
- b) regular reports assessing the group's overall structure and evaluating individual entity's activities compliance with the approved strategy.

5.196. In discharging its corporate governance responsibilities, the administrative, management or supervisory body of the entity responsible for fulfilling the governance requirements at group level:

- a) establishes a governance structure that contributes to the effective oversight of the entities in the group, taking into account the nature, the scale and complexity of the different risks to which the group and its components are exposed;
- b) ensures the overall consistency of the group's governance structure taking into account the structures, activities and of the different entities of the group;
- c) sets and reviews the general strategies and policies of the group;

- d) has appropriate means to control that each entities in the group complies with all applicable corporate governance requirements;
- e) ensures that reporting system in the group are clear, transparent and appropriate in order to guarantee adequate and timely communications within the group.

Guideline 51 – Risks with significant impact at group level

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity considers in its risk management system the risks both at individual and group level and their interdependencies, in particular:

- a. reputational risk and risks arising from intra-group transactions and risk concentrations, including contagion risk, at the group level;**
- b. interdependencies between risks stemming from conducting business through different entities and in different jurisdictions;**
- c. risks arising from third-country entities;**
- d. risks arising from non-regulated entities; and**
- e. risks arising from other regulated entities.**

5.197. The group is expected to have in place a process to identify the group's material risks, a comprehensive measurement system, a system of limits to manage exposures and other risk concentrations, and processes of stress testing and scenario and correlation analysis. Proper information systems and management reporting systems are essential for a sound risk management approach.

Guideline 52 – Group risk management

In accordance with Article 246 of Solvency I Directive I, national competent authorities should ensure that the responsible entity supports in its risk management at the level of the group by appropriate processes and procedures to identify, measure, manage, monitor and report the risks that the group and each individual entity are or might be exposed to.

In accordance with Article 246 of Solvency II Directive, national competent authorities should ensure that the responsible entity ensures that the structure and organization of the group risk management do not impair the undertaking's legal ability to fulfil its legal, regulatory and contractual obligations.

- 5.198. This guideline needs to be read in conjunction with guideline 14 Role of the administrative, management or supervisory body in the risk management system.
- 5.199. The entity responsible for fulfilling the governance requirements at group level is expected to assess how and to what extent all risks within the group are effectively identified, measured, managed and monitored. This assessment will be supported by appropriate documentation on the structure, organization and centralization of the group risk management system.

6. Appendixes:

Appendix 1: Revised Impact Assessment

Preliminary analysis of the opportunity of issuing preparatory Guidelines

- 6.1. Before analysing pros and cons of the proposed groups of Guidelines with respect to the baseline, it is necessary, on a logical basis, to justify the choice of issuing preparatory Guidelines now or not doing anything and wait till the application of Solvency II. Directive
- 6.2. For this null option it is possible to identify the following costs and benefits:

Option 0, not issuing preparatory Guidelines:

- 6.3. With regard to costs on the side of undertakings:
 - a) Potential compliance costs may arise in case undertakings start doing investments, purchasing systems and implementing processes, which may need to be changed later due to changes in the on-going political negotiations;
 - b) In the absence of Guidelines, practices may evolve differently with respect to other financial market sectors, provoking adjustment costs later (EBA issued guidelines in 2012 and IAIS have issued "Core Principles on Governance");
 - c) Another source of costs could be the final rushing to set up systems right before the implementation date of Solvency II Directive. During the rushing errors are also easier to happen.
- 6.4. With regard to costs on the side of national competent authorities:
 - a) Some member states have started implementing parts of good governance; this bears the risks of future costs in order to be consistent with European requirements in the future;
 - b) In the absence of Guidelines, supervisory practices may evolve differently with respect to other financial market sectors, provoking adjustment costs later (EBA issued guidelines in 2012 and IAIS have issued "Core Principles on Governance");
 - c) Another source of costs could be the necessity to supervise undertaking during the final rushing right before the implementation date of Solvency II Directive. During the rushing errors are also easier to happen.
 - d) The national competent authorities need to have enough resources and knowledge available for supervising (re-)insurance undertakings with regard to their system of governance. The preparatory period is a good opportunity for NCA, to build up this competence.
- 6.5. With regard to benefits on the side of undertakings:
 - a) The advantage for the industry could be that, in structuring its system of governance, undertakings have not to take into account any new aspects or further elements encompassed by these Guidelines.

- b) In fact some member states might not have required fulfilling any measures with regard to governance.
 - c) However, one can argue if that (not having guiding principles) is really an advantage.
- 6.6. With regard to benefits on the side of national competent authorities:
- a) The advantage for NCAs could be that they do not have to take into account new aspects or further elements in the process of supervision the compliance by undertakings.
 - b) However, one can argue if that (not having guiding principles) is really an advantage.
- 6.7. For consumers:
- a) No immediate advantage as any costs that may be reflected on policyholders would also happen with full preparation of Solvency II.
 - b) The financial crisis in 2008 has shown that some risks with negative consequences for policyholders had their source in bad and insufficient governance structures within (re-)insurance undertakings. Therefore, an enhanced system in the undertaking protects policyholders, which is a good reason for issuing preparatory Guidelines.
- 6.8. The balancing between cons and pros led to the final evaluation that is beneficial for all providing now preparatory Guidelines, to help undertakings and national competent authorities in taking decisions and organising during the preparation phase.

1: Procedural issues and consultation of interested parties

- 6.9. The Impact assessment was prepared in the course of the policy drafting process, with the contribution of experts on system of governance from different national competent authorities and EIOPA.
- 6.10. Selected stakeholders were pre-consulted in the preparation of the Guidelines.

2: Problem definition

- 6.11. Existing Supervisory requirements with regard to the system of governance vary widely across Member States. These differing requirements do not provide a level playing field for undertakings that are parts of cross-border groups or have cross-border branches. Therefore, new requirements should harmonise and streamline supervisory requirements with regard to the system of governance in order to enhance transparency across borders.
- 6.12. Based on the economic crises it became evident that there was a need to strengthen and improve the requirements for the system of governance to ensure a more consistent and harmonised approach and to raise governance standards. Focus will be on how undertakings should manage their processes and procedures, including systems and controls to ensure continuous compliance with legislation and capital requirements.
- 6.13. The "Opinion of EIOPA on interim guidelines regarding Solvency II", issued on the 20th December 2012, stresses the importance of having a

consistent and convergent approach with respect to the preparation of Solvency II. In the run-up of the new system, some key areas of Solvency II need to be addressed in order to ensure proper management of undertakings and to ensure that supervisors have sufficient information at hand. The system of governance is among these key areas. This area of Guidelines aims at guiding undertakings in their preparation for the future phasing in of Solvency II.

Proportionality

- 6.14. National competent authorities are expected to ensure that the provisions described in the Opinion are applied 'in a manner which is proportionate to the nature, scale and complexity inherent in the business of the insurance and reinsurance undertaking'. The approach taken aims to ensure that this expectation can be met, and this is reflected in the drafting of the Guidelines in two principal ways:
- 6.15. In most cases, the Guidelines are principle based or drafted with a view to the outcome or supervisory objective that should be met;
- 6.16. The level of detail and scope of the Guidelines reflects the fact that the Guidelines are issued in order to prepare for Solvency II and not for its full application.
- 6.17. For the overall approach to proportionality on the guidelines under consultation, please see the "Cover note for the Consultation Paper on Guidelines on preparing for Solvency II".

Baseline Scenario

- 6.18. When analysing the impact from policies, the methodology foresees that a baseline scenario is applied as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered. The aim of the baseline scenario is to explain how the current situation would evolve without additional public intervention. For the analysis of the potential related costs and benefits of the proposed guidelines, EIOPA has applied as a baseline the current practice, that means Solvency I requirements plus any national legislation on top of it (including any possible preparation that has already been made for implementing Solvency II Directive, as well as some provisions set out in the CEIOPS' Level 3 Guidance).

3: Objective pursued

- 6.19. The aim of the preparatory Guidelines on the system of governance is to provide guidance to undertakings to prepare for the phasing of requirements about the system of governance stated in the future Solvency II regime.
- 6.20. In the "Opinion of EIOPA on interim guidelines regarding Solvency II", system of governance is cited among the key areas in the preparation for future Solvency II. Moreover, the Opinion asks national competent authorities to start preparing appropriate procedures and tools to ensure that undertakings have in place an effective system of governance which provides for sound and prudent management.
- 6.21. When assessing the merits of the various policy options and approaches the aim is to deliver a system that addresses the weaknesses of the

current regime, in particular with respect to removing obstacles to the proper functioning of the single market, whilst achieving an appropriate balance between the objectives of enhancing the protection of policyholders and beneficiaries and improving the international competitiveness of EU insurers and reinsurers.

3: Policy options

- 6.22. In the light of the specific characteristics of these Guidelines, it was agreed to describe policy options not Guideline by Guideline neither group by group of Guidelines, but to proceed by themes. In fact, the Guidelines are all strictly linked and interrelated, and analysing them one by one would have ended up in a too fragmented and partial description. After discussion, it has been judged more appropriate to present directly policy options EIOPA considered, and then offer motivations about the preferred final choice. This way of constructing the reasoning appeared more adherent to the goals at the basis of system of governance.
- 6.23. EIOPA has identified five options that were considered in the development of the preparatory Guidelines. The identified options are based on what EIOPA believes could have the most significant impact on undertakings and the level of protection of policyholders as well as beneficiaries. The focal point of the options identified is how an underlying problem could evolve, all things being equal, if such options were not decided upon.
- 6.24. It is also worth highlighting that against the baseline the proposed preparatory Guidelines should not create material new requirements for undertakings in general. Instead, they give guidance as well as steering on what would be expected from the undertakings by national supervisors. Hence, for undertakings to comply with the preparatory Guidelines no additional costs are envisaged in comparison to those costs for implementing final Solvency II requirements in the future.

Whether to specify the difference between, and terminology of, risk tolerance and risk appetite

- 6.25. EIOPA discussed whether to neither define nor clarify the terminology of risk tolerance and risk appetite at all since the terms are widely used and are understood differently within the financial sector or perhaps just to define characteristics of the terms used but not give definitions to ensure some basis for a common understanding. Finally it was discussed whether to prescribe a Solvency II definition of the terms to ensure a harmonised understanding between members and to ensure a common approach when reading the preparatory Guidelines.

Whether to develop Guidelines on Prudent Person Principle as part of the System of Governance for the interim period

- 6.26. Based on Article 132 of Solvency II Directive, EIOPA discussed whether to develop Guidelines on the Prudent Person Principle (PPP) as part of the System of Governance on account of the reference to PPP in Article 44 of Solvency II Directive, or to leave it out for the preparatory period.

Whether to include minimum requirements on the use of derivatives in the preparatory Guidelines

- 6.27. Article 44 of Solvency II Directive requires that the risk management system of an undertaking cover among other things investments, in particular derivatives and similar commitments. The prudent person principle in Article 132 of Solvency II Directive requires that undertakings only invest in assets whose risks can be properly identified, measured, monitored, managed and reported. Paragraph 4 of that Article also sets out some specific requirements on the use of derivatives. EIOPA discussed whether the requirements within Solvency II Directive addressing the use of investments, including the above articles, should be complemented by further guidelines that specifically addressed requirements relevant to the use of derivatives by undertakings.

Whether to require combined annual information from the Actuarial Function to the AMSB or leave it up to the undertaking to decide how and when the information is to be provided

- 6.28. According to Article 48(1) of Solvency II Directive the Actuarial Function has to inform the AMSB about several subjects regarding the coordination or calculation of technical provisions. However, this does not include requirements on how this should be conducted. Hence, it was discussed whether the Actuarial Function has to provide to the AMSB combined information on an annual basis on all relevant issues or if the information should be provided whenever deemed necessary.

Whether or not to have extended notification requirements during the preparatory period

- 6.29. According to Article 42(2) of Solvency II Directive the notification requirements for persons subject to fit & proper requirements will apply to persons effectively running the undertaking and persons responsible for a key function. Existing notification requirements on national level usually apply to persons belonging to the AMSB or parts of it. Hence, the question was raised whether to require that additional persons, e.g. person responsible for key functions, should be notified to the supervisory authority during the preparatory period.

4: Analysis of impacts

- 6.30. As a consequence of the choice of describing options not Guideline by Guideline, nor group by group of Guidelines, but by theme, it was agreed to give to this chapter a structure symmetric to the structure of the previous chapter. For each option, arguments are constructed to prepare the selection of the preferred one. In the next chapter, these pros and cons are compared in order to arrive to the final choice. For each preferred option, the next chapter will summarise pros and cons for all actors involved, with the breakdown for undertakings, supervisors and policy holders.
- 6.31. In the Solvency II project, policy-makers have already considered, analysed and compared a number of policy options. Based on the impact assessment already done for the requirements set in Solvency II Directive EIOPA has considered a wide range of policy options referring to the preparatory Guidelines. In this section EIOPA would like to show alternative options which were considered and preferred options that have been analysed seriously, and to explain why they were not pursued.

- 6.32. During the analysis, the principle of proportionality was always taken into account, as the Community actions should not go beyond what is necessary to achieve satisfactorily the objectives which have been set. Due to their size and scarce resources, small and medium sized undertakings (SMEs) can be affected by the costs of regulations more than their bigger competitors. At the same time, the benefits of regulations tend to be more evenly distributed over entities of different sizes. SMEs may have limited scope for benefiting from economies of scale. SMEs in general find it more difficult to access capital and as a result the cost of capital for them is often higher than for larger businesses. Therefore, the principle of proportionality was always taken into account while considering different options.

Whether to specify the difference between and terminology of risk tolerance and risk appetite

- 6.33. When drafting the risk management section of the preparatory Guidelines on the system of governance, it was extensively discussed whether to specify the difference between risk tolerance and risk appetite.
- 6.34. The use of the terms is very diverse, and EIOPA discussed whether a Solvency II definition would ensure a common understanding of the meaning of the terms for the purpose of compliance with requirements and ensure a harmonised approach between supervisors. However, the Solvency II terminology could diverge from the undertaking's view of how the terms are to be understood. Furthermore use of the terms with different meanings within the undertaking for internal and regulatory purposes could lead to mistakes and unnecessary risk exposure.
- 6.35. Another option discussed was for EIOPA to respect the use of the terms as currently employed by undertakings while ensuring that for the purpose of compliance with regulatory requirements there is no ambiguity as to what is meant by the terms. This would still require the necessity for discussions between undertakings and supervisors to verify that the terms are used as understood under Solvency II and not as internally used and defined by the undertaking itself.
- 6.36. The last option discussed was for EIOPA not to try and define the terms nor clarify the terminologies at all which would give the undertakings the possibility of not changing their current definitions of risk tolerance and risk appetite. This option though, would give the undertakings considerable uncertainties with regard to compliance with requirements as set out in Solvency II Directive or the preparatory Guidelines. Additionally, it would also entail lack of harmonisation between national competent authorities in understanding the terms and could make the communication between undertakings and supervisors more difficult as there is not necessarily a common understanding as to the meaning and usage of the terms.

Whether to develop Guidelines on Prudent Person Principle as part of the System of Governance for the preparatory period

- 6.37. The Prudent Person Principle (PPP) is defined in Article 132 of Solvency II Directive but it is closely linked and explicitly mentioned in Article 44, it was discussed whether preparatory Guidelines were needed to specify the requirements and supervisory expectations of this Article and whether

the development of preparatory Guidelines should be a part of the system of governance.

- 6.38. The reasoning for choosing the option to include PPP in the interim period, although Article 132 of Solvency II Directive is relative to Pillar I requirements, is that its application has to be firmly embedded within the undertaking's system of governance. EIOPA believes that undertakings could use the preparatory period to put in place a risk framework in which to test the application of PPP in respect of the undertakings investment policy taking into account the fact that the regulatory quantitative limits will no longer apply under Solvency II. Moreover, the definition and regulation of PPP in Solvency II is fairly short and high-level and being aware of, that these requirements encompass substantial responsibilities for undertakings, the lack of guidance would be particularly challenging for undertakings and supervisors alike.
- 6.39. If EIOPA did not develop preparatory Guidelines this would give undertakings more flexibility in how to interpret Article 132 of Solvency II Directive. Furthermore, the principle as such - as opposed to its application to insurance undertakings - is not new. Undertakings could fall back on general explanations and understandings of the principle and hence, might not need guidance beyond what is already written. This would also limit the compliance costs, but could give more uncertainty on how to apply the PPP.

Whether to include minimum requirements on derivatives as part of the preparatory Guidelines

- 6.40. Derivatives pose a substantial risk to the solvency of undertakings when they are mismanaged and embody particular risks which to a large extent are unique in relation to other asset categories, such as the exposure that goes beyond the principal (amount) invested.
- 6.41. If EIOPA were not to specifically address requirements relevant to the governance of derivatives within these Guidelines, it would provide undertakings with greater discretion to determine what governance practices were necessary for the use of such instruments in relation to their risk profile. Conversely, by EIOPA developing preparatory Guidelines undertakings would get more information on the minimum requirements national competent authorities would expect them to comply with in the use of such instruments. Hence, the Guidelines would also encompass descriptions of some specific, but important aspects to ensure compliance with governance requirements when investing in derivatives.
- 6.42. Article 44 of Solvency II Directive requires the risk-management system to at least cover the governance/control of investments and in particular derivatives and other commitments since these are not fully included in the calculation of the solvency capital requirement. Furthermore, Article 132 of Solvency II Directive already states that an undertaking need to identify, measure, monitor, manage, control and report all risks adherent to assets. Thus, knowing that undertakings would be assessed according to certain expectations whether they are set out in Guidelines or not, while still keeping in mind those minimum requirements specifically for certain investments, could put obstacles in the way of using derivatives. Consequently, this could create additional costs for undertakings with

regard to organisation of processes and procedures (internal controls and documentation).

Whether to require combined annual information from the actuarial function to the AMSB or leave it up to the undertaking to decide how and when the information is to be provided

- 6.43. When discussing the actuarial function and the level of information to be provided to the AMSB that should be expected it was further discussed whether to require combined annual information from the actuarial function or leave it up to the undertaking to decide how and when the information is to be provided on annual basis.
- 6.44. If the actuarial function has to prepare combined annual information covering all the issues to be reported to the AMSB this would ensure a higher level of harmonization among Member States concerning the frequency and the content of the information likely to be achieved. Furthermore, having a single document covering all the relevant issues concerning the tasks the actuarial function is responsible for, implies that all the relevant information is concentrated, but comprehensive.
- 6.45. Hence, there is less risk of missing information in this reporting process. It is also easier for the AMSB to identify the main problems and have the full picture of the different tasks performed and conclusions obtained as well as allowing for an easier way to see how technical provisions affect the assessment of the overall underwriting policy and the adequacy of the reinsurance arrangements. A consequence of the AMSB only receiving combined annual information is that it does not necessarily get the most critical information when the information is needed in order to take this into account in its decision-making process.
- 6.46. Alternatively, consideration was given to the fact that the actuarial function could report during the year and encompass all relevant issues when they arise. This would enhance the possibility of having a more continuous reporting process along the year, making it easier to identify the problems at an earlier stage and give the undertaking a higher level of flexibility in the reporting process.
- 6.47. Additionally, this could more effectively involve the AMSB during the process of calculation and validation of technical provisions. Therefore, it gives the AMSB the option of challenging the analysis carried out. Hence, the reporting can be done nearer to the performance of the task and may be of better quality on this account (more details and better pros and cons when an assessment is fresh in mind).
- 6.48. A drawback to the annual separate reporting is the risk that providing parts of the information at different points in time could make it more difficult to see the entire picture for the AMSB and other potential recipients and lead to bad decision-making based on a deficient/inadequate basis.

Whether or not to have extended notification requirements during the preparatory period

- 6.49. As these Guidelines are based on the assumption that the qualitative requirements set out in Solvency II Directive are already applicable, EIOPA could have proceeded with giving guidance on notification of

persons effectively running the undertaking and responsible for key functions. While this would introduce better scrutiny it would however add considerable administrative burdens on both undertakings and supervisory authorities.

- 6.50. Having a postponement of the notification requirement could give an undertaking more leeway in testing whether a person really has the right qualifications for being a person appointed responsible for a key function. Furthermore, the undertaking would be able to more clearly define the tasks and responsibilities for the person responsible for the key function considering the undertaking's specific business model and clearly define in its processes and procedures what is expected of the key function and the person responsible for the key function.
- 6.51. On the other hand not having the notification requirement in place during the preparatory period, could make both supervisory authorities and undertakings less familiar with the notification process. Additionally, there could be a risk that the undertaking within the preparatory period has appointed a person that does not fulfil the fit and proper requirements from the time when Solvency II Directive is fully implemented.
- 6.52. The requirement set out in Article 42(3) of Solvency II Directive will only apply during the preparatory period for persons already subject to notification requirements on national level.

5: Comparing the options

- 6.53. EIOPA believes that the proposed policy options help achieve the objectives pursued in enhancing the protection of policyholders and beneficiaries and improving the international competitiveness of EU insurers and reinsurers, in an efficient and effective way. A specific characteristic of the policy options proposed, and which contributes to an effective and efficient result, is that they allow for supervisory practices to be applied in a proportionate manner with respect to a risk based approach.
- 6.54. EIOPA appreciates that issuing these Guidelines may have an economic impact on undertakings. However, the benefits of having a common understanding of the requirements for the system of governance from the application of Solvency II Directive between undertakings and supervisors are a vital step to ensure a level playing field and the much needed transparency. By keeping the incremental costs of issuing preparatory Guidelines in mind the options were extensively discussed and pros and cons were compared in order to find the best solution.
- 6.55. For the option of determining whether EIOPA should make a Solvency II definition of differences between the terms "risk tolerance" and "risk appetite" in order to align the use of these terms on the European level EIOPA discussions were based on the necessity of streamlining the terms. The pro would be a common approach to the use of the terms which would make comparisons. The con, however, is that the terms are not new within the financial sector and many undertakings already apply them on a daily basis.

- 6.56. Accordingly, EIOPA decided that instead of giving a Solvency II definition and specify the differences of the terms risk tolerance and risk appetite it would facilitate discussions and understandings between supervisors and undertakings in the long run if characteristics were provided alongside building blocks for the undertakings to decide for themselves how to apply the terms. This ensures that supervisors and undertakings are equally responsible for reaching a common understanding of the use of the terms and limit misunderstandings.
- 6.57. When discussing the necessity of developing preparatory Guidelines on PPP as part of the system of governance EIOPA decided that since the application of the principle for insurance undertakings is a requirement in Solvency II Directive without any quantifiable thresholds for investments there is a strong link to the risk management system. Accordingly, the development of a separate set of Guidelines was discarded on account of the reference in Article 44 of Solvency II Directive and the significant link between risk management and investment policies.
- 6.58. Further, EIOPA received remarks from stakeholders during consultations and informal suggestions that some stakeholders were unsure what the principle entails. E.g. PPP does not mean "anything goes". In order to ensure and promote a common understanding among supervisors and undertakings as to what the principle and its requirements are, EIOPA developed these Guidelines. The Guidelines cover investment risk management, assessment of non-routine investment activities, investments in unit-linked and index-linked contracts and finally on the use of securitised assets and assets not admitted for trading on a regulated market to ensure a minimum level of harmonisation and understanding of the principle as well as the close link to risk management. The expectation is that undertakings should use the preparatory period to familiarise themselves with the application of the PPP and how it can be embedded in the investment policy.
- 6.59. In a similar context the option of developing Guidelines on the use of derivatives was discussed. Knowing that undertakings would be assessed according to certain expectations regarding the use of derivatives whether they are set out in Guidelines or not, and taking into account that new requirements could put obstacles in the way of using derivatives and create additional costs for undertakings with regard to organisation of processes and procedures (internal controls and documentation), EIOPA found that providing Guidelines would meet the objectives of Solvency II Directive more effectively and efficiently and provide for a better understanding of allocation of capital resources.
- 6.60. Furthermore, by ensuring a more common understanding of the use of derivatives and the risks they impose, undertakings could enhance policyholder protection while improving the international competitiveness of the insurance sector due to a common basis for investment strategies and better capital management.
- 6.61. Accordingly, EIOPA decided that Guidelines should be developed to ensure focus on the increased use of derivatives by undertakings but be kept to a minimum to ensure the flexibility as provided by the PPP. Guidance on how to handle investments in derivatives focuses on the

importance of this issue being addressed in the policy on risk management and that undertaking can demonstrate and document how derivatives are used to contribute to a reduction of risks or as risk mitigation technique.

- 6.62. The same flexibility applied to the option on whether to require combined annual information or just separate reporting on relevant issues from the actuarial function to the AMSB. According to the system of governance requirements, the AMSB must ensure that information regarding the undertaking's risks are generated and communicated to the individuals who need to see it. If reports are to be done at different times and communicated to different people the AMSB must consider the resulting impact upon the relevance, coherence and timeliness of information reporting within the organization to ensure clear processes and procedures in order to limit misunderstandings.
- 6.63. Nevertheless, since reporting processes and procedures are undertaking specific, EIOPA decided to leave the responsibility to undertakings for determining what reporting process and procedures fits the undertaking's specific business structure. Hence, EIOPA decided to leave it to the undertakings to decide how they wish to receive the information required in order to fit their reporting needs. Accordingly, the Guidelines only require that the AMSB receives at least an annual internal report documenting the tasks undergone by the actuarial function, the results and the identification of any deficiencies identified and how these can be remedied. Concerning option 6, regarding the notification requirement during the preparatory period, EIOPA decided that requiring a notification according to Article 42 (2) of Solvency II Directive for persons responsible for a key function would be too onerous to apply. However, undertakings are still responsible for conducting their own internal fit & proper assessment of people appointed during the preparatory period and ensuring that the appointed persons meet the requirements as set out in Article 42 of Solvency II Directive when applicable.

5: Concluding remarks

- 6.64. The cost and benefits of introducing preparatory Guidelines can be summarised in the following breakdown:

Undertakings

- 6.65. Additional costs for undertakings can be valued on a minor scale compared to those introduced by Solvency II Directive:
- a) Specifying certain terms used in Solvency II Directive, like risk tolerance and risk appetite, does not affect costs when applying the preparatory Guidelines;
 - b) The prudent person principle is already introduced in Solvency II Directive and by including it in the preparatory Guidelines the specification on how to apply the principle facilitates the use of the principle for undertakings as it clarifies supervisory expectations;
 - c) The minimum requirements that govern the use of derivatives also help undertakings to better understand what is required of them when engaging in the use of derivatives as part of their investment strategy. Furthermore, this will prepare the undertakings for the

increased scrutiny by the supervisory authorities when Solvency II is fully applied and the quantitative regulatory limits are replaced by the prudent person principle;

- d) EIOPA has left it up to undertakings to decide whether they want the actuarial function to submit combined annual information or submitting it as required by the AMSB. This leaves more discretion to undertakings without increasing costs and gives them the possibility to implement the solution most appropriate for their purposes;
- e) The postponement of the notification requirement will not increase costs for the undertakings during the preparatory period. Nevertheless, they still have to assess internally whether a person is fit and proper which is a requirement imposed by Solvency II Directive and not added by the preparatory Guidelines;

6.66. Undertakings would gain benefits from the preparatory Guidelines:

- a) They still leave undertakings with the freedom to organise themselves as they think is appropriate while making some of the principles and requirements clearer in order to facilitate compliance with Solvency II requirements;
- b) The preparatory Guidelines give the basis for a common European understanding for all undertakings about the relevance and requirements of governance, thus strengthening the soundness and transparency of the market and promoting good practices across Member States;
- c) Since they clarify supervisory expectations, they can facilitate the communication between undertakings and supervisory authorities, helping undertakings to avoid the possible costs of revisions following a supervisory review;
- d) They are designed to assist the industry in putting in place and testing the adequacy of new system of governance in preparation for the full implementation of the Solvency II regime.

Supervisory Authorities

6.67. From the perspective of the supervisory authorities, the largest part of costs related to the System of Governance requirements arises directly from Solvency II. Directive Nevertheless, there are some costs related to the preparatory Guidelines where the undertaking has the freedom to decide what is best for them. This entails the necessity for supervisory authorities of making sure that they understand each undertaking's specific way of doing business in terms of how they are organised, how they define their investment strategy and how they apply terms not defined by Solvency II.

6.68. However, supervisory authorities will also benefit from the interaction needed since it gives them a better insight into how the undertakings work in practice.

Policyholders

- 6.69. The indirect costs of introducing preparatory Guidelines on the system of governance could, at least to some extent, be transferred from undertakings to policyholders, depending on the market conditions prevailing in each Member State. However, EIOPA believes that no direct costs are expected for policyholders stemming directly from these Guidelines, which are different than those costs anticipated for the implementation of the final Solvency II requirements. Policyholders will benefit from the sounder governance and higher level of transparency associated with the preparatory Guidelines that ensures better policyholder protection.
- 6.70. EIOPA believes that the application of the proposed Guidelines as well as characteristics of terms ensures a harmonised and comparable basis for undertakings' risk and capital management as well as for the risk-based supervisory assessment. Moreover, EIOPA is convinced that the application of these Guidelines will ensure common understanding and a level playing field within the internal market.

Appendix 2: Resolution of comments:

Summary of Comments on Consultation Paper No. 13/08 - EIOPA-CP-13/08		27 September 2013		
CP-13-008_System_of_Governance				
<p>27EIOPA would like to thank ACA, AMICE, Aon Ltd, ASSOCIATION OF BERMUDA INSURERS AND REINSURERS (ABIR), Association of Financial Mutuals, ASSURALIA, BDO España, BIPAR – European Federation of Insurance Intermediaries, CRO Forum and CFO Forum, Danish Insurance Association (DIA), Deloitte Touche Tohmatsu, DIMA (Dublin International Insurance & Management), ECIROA, FEE, Financial Reporting Council, French Federation of Insurance Companies (FFSA), General Insurance Corporation of India, German Insurance Association (GDV), Groupe Consultatif Actuariel Européen, Institut des Actuaires, Insurance and Reinsurance Stakeholder Group (IRSG), Insurance Association of Cyprus, Insurance Europe, Insurance Ireland, International Underwriting Association of London (IUA), Investment & Life Assurance Group Limited (ILAG), Lloyd's, MetLife, MGM Advantage, MSV Life, Munich Re, NFU - Nordic Financial Unions, Nordea Life & Pensions, Polish Chamber of Insurance, Powszechny Zakład Ubezpieczeń Spółka Akcyjna, ROAM- Réunion des Organismes d'assurance mutuell, RSA Insurance Group, STEPTOE & JOHNSON LLP, The Bermuda Monetary Authority, The European Confederation of Institutes of Internal Auditing (ECIIA) and Towarzystwo Ubezpieczeń Europa S.A.;</p> <p>The numbering of the paragraphs refers to Consultation Paper No. 13/08 (EIOPA-CP-13/08)</p>				
No.	Name	Reference	Comment	Resolution
1.	ACA	General Comment	<p>ACA is the professional association of insurance companies based in Luxembourg, with offices located 12, rue Erasme L-1468 Luxembourg.(aca@aca.lu)</p> <p>ACA supports the efforts of EIOPA to a PHASING-IN (and only a phasing-in) towards the complete application of Solvency2 in 2016 by publishing interim-Guidelines. For legal certainty, all guidelines have to respect the fact that Solvency 1 is still applicable until the effective date into force of</p>	Please refer to "Purpose of the preparatory phase" of the Feedback Statement.

			<p>Solvency 2. Moreover all interim measures and guidelines must respect the proportionality principle as mentioned in the Directive. Many dates of effect mentioned in the guidelines refer to 01.01.2014; however this date is not sure which leads to major practical problems, especially for small and medium sized undertakings as this date is very near. All guidelines should contain a precise effective date and a delivery date. As a matter of fact this leads to more work on top of the Solvency 1 requirements, which has to be planned.</p>	
2.	AMICE	General Comment	<p>Role of the administrative, management or supervisory body</p> <p>The AMSB shall be regarded as a plural term which fits into any type of governance model. The assignment of tasks and responsibilities to the AMSB should not pre-empt the organizational structure of the undertaking. The division of duties between management and board should be left to the undertaking.</p> <p>Proportionality</p> <p>It is absolutely necessary to avoid overburdening undertakings in general, and small and medium-sized insurers in particular, with unnecessary obligations. The principle of proportionality should be further developed in these guidelines. The decision to apply a threshold from the minimum market coverage of 80% of the market share in each Member State should also apply to the system of governance to ensure small and medium size undertaking have enough time to adapt to the solvency II requirements.</p> <p>Documentation</p> <p>In line with the principles of proportionality and materiality, we suggest to limit the implementation of the documentation requirements during the interim phase to the written policies on the four key functions and the ORSA policy.</p>	<p>Which body is addressed by the term AMSB may differ between requirements (L1 and 2 and EIOPA Guidelines) and will depend on national company law. When deciding on the division of duties between the AMSB and senior management undertakings have to respect national company law and regulatory requirements. Proportionality is inherent to the Solvency Directive and applies, where appropriate, to any requirement. EIOPA considers it not necessary and possible to develop the application of the principle of proportionality further.</p>

			<p>The requirement to produce written policies in relation to 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 (Art 93) goes beyond the objective of starting preparations to the implementation of Solvency II.</p> <p>Omnibus II /Solvency II timeline</p> <p>It would be useful if EIOPA can provide clarification as to the role of the four key functions in case of further delays to the Solvency II Directive.</p>	<p>The principle of proportionality applies to documentation, written policies and the key functions. It is up to the undertaking to apply these requirements, taking into account the nature, scale and complexity of the risks inherent to its business.</p> <p>No requirement to develop what is needed from the start of Solvency II goes beyond the objective to prepare for Solvency II since there is no other way to ensure that an undertaking is fully compliant with Solvency II requirements on 1 January 2016. Preparation does not mean that all these policies should be in place on 1 January 2014.</p>
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				Please refer to "Purpose of the preparatory phase" of the Feedback Statement.
3.	Aon Ltd	General Comment	There are a number of specific new requirements introduced into these interim requirements which do not appear in the L1 or L2 text of the directive. Furthermore, some of these interim requirements are very explicit in their description which contradicts the principles approach outlined in the objectives. It is observed that the new specific requirements tend to be in the area of investment management. As the requirements are not principles based it will be difficult for small and/or simple organisations to implement the requirements in a proportionate way.	Disagree. The application of the principle of proportionality is inherent to the Solvency II Directive and these Preparatory Guidelines.
4.	ASSOCIATION OF BERMUDA INSURERS AND REINSURERS (ABIR)	General Comment	The Association of Bermuda Insurers and Reinsurers (ABIR) is grateful for the opportunity to provide comments on the Consultation Paper. ABIR is a professional trade association representing Bermuda's Class 4 insurers and reinsurers. Our 21 members write a significant amount of insurance and reinsurance from both subsidiary corporations in Europe and from cross border export sales from Europe to our Bermuda underwriting headquarters. Eighteen of our 21 member companies have European subsidiary corporations. EIOPA in its cover note (EIOPA CP-13/015) requested that comments present a clear rationale and description of alternatives for EIOPA's consideration. ABIR has responded to this request with our comments	Noted. Noted.

			below.	
5.	Association of Financial Mutuals	General Comment	<p>The Association of Financial Mutuals represent financial mutual insurers within the UK, with 53 member companies and assets approach £100 billion. We welcome the chance to comment on this consultation paper.</p> <p>We have one general comment on the whole paper. It is difficult to see to whom the guidelines will be applied. Will it be applied to firms that are within the current Directives on insurance business or will it be applied to firms that are within the Solvency II Directive? There are firms in the UK which are non-directive under the current regime but will become directive under the Solvency II regime and also firms that are currently complying with the current directives who will become non-directive under Solvency II. We would suggest that EIOPA should state that the firms covered should be those who will be directive under Solvency II.</p>	<p>Noted.</p> <p>As the Guidelines are to ensure appropriate preparation for Solvency II they are relevant for undertakings that will be within the scope of the Solvency II requirements – either according to the Solvency II Directive or because and insofar as Member States choose to apply Solvency II requirements on undertakings outside the scope of Solvency II.</p>
6.	ASSURALIA	General Comment	<p>Assuralia (the Belgian association of insurance undertakings) welcomes the opportunity to comment on the Consultation Paper on the Proposal for Guidelines on the System of Governance. Assuralia supports an effective system of governance and thereby sound and prudent management of the undertakings.</p> <p><input type="checkbox"/> In which way will EIOPA guarantee a level playing field between the member states as these guidelines will be implemented on a “comply or explain” basis?</p>	<p>Noted.</p> <p>A level playing field is not possible at the moment but the Preparatory Guidelines is the best move</p>

			<input type="checkbox"/> Will EIOPA give a clear indication of the guidelines which deserve most attention in the interim period towards Solvency II (prioritization)? It is assumed that this will be important for the monitoring of the implementation of the interim measures. <input type="checkbox"/> It seems that the guidelines are addressed to the National Competent Authorities (NCAs) while the explanatory text is often addressed to the insurance companies. It is proposed that the guidelines and the explanatory text are written in a complementary style.	<p>towards a level playing field that EIOPA can have at the moment.</p> <p>There will be no prioritization by EIOPA or necessarily by NCAs either. Monitoring sufficient progress in the preparation is not dependent upon requiring that certain issues are addressed first.</p> <p>Undertakings and NCA's are expected to apply a risk-based approach towards their preparations during the preparatory phase. The focus will be on areas of greater risk to undertaking preparedness.</p> <p>Explanatory Text being explanatory does not have an addressee. Incidentally, whether the addressees of Guidelines are the NCAs or undertakings is of little de facto relevance.</p>
7.	CRO Forum	General	Joint CFO Forum and CRO Forum feedback on Interim measures	

	and CFO Forum	Comment	<p>We reiterate our support for the efforts made by EIOPA in seeking to achieve harmonised progress towards the implementation of Solvency 2 in the European Union and welcome the opportunity to comment on these consultations.</p> <p>We look forward to engaging with you and your team constructively as EIOPA finalises the guidelines for the interim period.</p> <p>Some key considerations in respect of the system of Governance as set out below:</p> <p>1. The guidelines on the roles and responsibilities of the Functions are described at inconsistent levels of detail and in many cases we perceive them to be overly prescriptive.</p> <p>As previously stated in our example on the level of prescription, we feel the detail with which the roles and responsibilities of the different functions are described is inconsistent and not principles based. In many cases we believe the guidelines are overly detailed favouring a specific organizational solution, for example with the actuarial function. We believe that to comply with the responsibilities set out for such functions, firms should be allowed to organize themselves as they best see fit, with the goal of avoiding duplication/overlap of responsibilities, while maintaining the fundamental principles of checks and balances the regulators want to see implemented, and the independence of control responsibilities and tasks.</p> <p>We would welcome industry consultation on how the functions should interact in such a way as to avoid overlap in responsibilities.</p>	<p>Noted.</p> <p>Noted.</p> <p>The aim of Guidelines is to clarify and specify where this is considered to be necessary. This will logically result in some areas being given more space than others. Whatever guidance is given it follows from the Directive and is drafted in such a way that it still leaves considerable room to undertakings to achieve the objective pursued by organising themselves as they see fit. According to the Solvency II Directive a function is an administrative capacity to undertake particular governance tasks. The identification of a particular function does</p>
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			<p>2. The guidelines on the prudent person principle are impractical, subjective and do not apply a proportionate approach to Efficient Portfolio Management (EPM).</p>	<p>not prevent the undertaking from freely deciding how to organise that function in practice save where otherwise specified in the Directive.</p> <p>These preparatory Guidelines are designed to detail the supervisory expectations as regards the application of the Solvency II Directive requirements. These expectations are expressed in such a way as to strike a balance between a principles based approach and the practical compliance with these expectations. To any of these expectations the principle of proportionality applies.</p> <p>It is up to the undertaking to apply these requirements, taking into account the nature, scale and complexity of the risks inherent to its business.</p>
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			<p>Having to introduce additional constraints on top of existing regulations for managing investments will be challenging where the regimes (Solvency I and Solvency 2) could lead to different decisions in some cases. During the interim period, we would prefer that the requirements apply to firms only on ad-hoc basis requiring firms to review their portfolio on a regular basis and assess the impact of Solvency 2 on their composition and on the level of associated risk.</p> <p>3. The guidelines on outsourcing are impractical and not proportionate. The guidelines indicate that fit and proper checks will need to be carried out on all persons working on an outsourced function. This is impractical and the effort required to train all staff would potentially outweigh the benefits. We would suggest applying proportionality here to assess who needs to be Fit and Proper (e.g. people effectively running the service provider) and then rely on ensuring the required contractual obligations are implemented. This would ensure the supplier was held accountable for delivery of the services to the required level.</p>	<p>The potential for different decisions is exactly why it is necessary to take into account the consequences of the Solvency II regime already.</p> <p>Disagree. The relevant Guideline is about the outsourcing of key functions only. It is a Directive requirement that all persons performing key functions (that means: working in a key function) have to be fit and proper. This is the meaning of article 42 (1), that refers to 'have other key functions', to be distinguished from being responsible for a key function, as referred to in article 42 (2) have to be fit and proper. The fit and proper requirements as regards outsourcing apply in the same manner as if the undertaking would have</p>
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			<p>Also, the guidelines set out that 'insurance intermediaries' would fall in scope of outsourcing requirements. This should be explicitly limited to activities not covered by the Insurance Mediation Directive to avoid overlapping of two supervisory framework</p>	<p>performed the relevant tasks and activities itself.</p> <p>It is up to the undertaking to ensure through the outsourcing agreement that the service provider meets the fit and proper requirement of the Solvency II Directive. It is not possible to delegate the responsibility for meeting regulatory requirements when functions and activities are being outsourced.</p> <p>The Guidelines only point out that insurance intermediaries may fall within the scope. This is only the case where the arrangements meet the definition of outsourcing.</p> <p>Where insurance intermediaries in their own name, but on behalf of an insurance undertaking accept risks (coverholders) such an</p>
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			<p>We would like to emphasise that any governance request related to the technical provisions should allow for a sufficient time period after the rules in respect of valuation have been published. This is to allow companies to implement the rules appropriately.</p>	<p>activity is to be considered as outsourcing and therefor falls within the remit of the Solvency II Directive.</p> <p>Noted. That is no problem under the preparatory approach.</p>
8.	Danish Insurance Association (DIA)	General Comment	<p>Reference is made to the public consultation on Guidelines on preparing for Solvency II, the proposal for Guidelines on the System of Governance. The Danish Insurance Association (DIA) appreciates the opportunity to give response on the interim measures.</p> <p>DIA welcomes the effort to establish a level playing field among the insurance companies in Europe. Nevertheless DIA has observed that this effort is made before the existence of a final political agreement on Solvency II. Regulation should be based on an observed need for changes in the insurance industry which has been agreed upon in the political process. With that in mind, it is of some concern to the DIA that Guidelines are made before an agreement of the future regulation is established. It seems unclear, how these guidelines build on existing regulation.</p> <p>Our concern is therefore, that the guidelines will not be implemented in the same way in all member countries. For that reason it is the opinion of the DIA, that Guidelines should be applicable by a comply or explain principle, not only for the competent authority but also for the insurance companies.</p>	<p>Noted.</p> <p>Please refer to "Purpose of the preparatory phase" of the Feedback Statement.</p> <p>Please refer to the resolution to comment 6.</p>

			<p>It is therefore of great importance, that no competent authorities are supposed to make new national regulation to comply with this set of standards, as the guidelines are not at this stage a matter of proven best practice. Further DIA suggest, that the use of thresholds mentioned in the cover note, page 9 to 11, are used also on the guidelines on governance, as a longer period of phasing in is needed for the small and medium sized undertakings.</p>	<p>Member States are free to implement new national regulation in order to comply with the preparatory Guidelines as these are in line with Solvency II requirements. The Guidelines are about ensuring appropriate preparation for Solvency II which means that undertakings are not expected to comply fully with the Guidelines as of 1 January 2014. Legally it is not possible to grant small and medium sized undertakings longer periods of phasing in than bigger undertakings; all undertakings will have to comply fully with all requirements from day 1 of Solvency II.</p>
9.	Deloitte Touche Tohmatsu	General Comment	<p>We welcome the preparatory guidelines as ensuring convergence of practices across Europe ahead of Solvency II's implementation is critical.</p> <p>To improve the contribution of these guidelines to Solvency II</p>	Noted.

			<p>preparedness, we believe that they should be cross-referenced with the envisioned Level 2 and Level 3 measures. This would ensure that the preparatory guidelines are actually seen as a “stepping stone” to the full Solvency II requirements and not a separate set of rules, requiring additional work from undertakings already dealing with much change. We feel that if these preparatory guidelines were an additional burden, not a stepping stone to full Solvency II reporting, this would not serve the purpose which EIOPA aim for but, rather, would distract undertakings from their core implementation activities and have a detrimental effect on their work towards compliance.</p>	<p>Theoretically, EIOPA would have preferred to cross reference these preparatory Guidelines with the draft Implementing Measures. Due to the fact that these draft Implementing Measures are still subject to negotiations between trilogue parties, this however is not legally permissible.</p> <p>Nevertheless, these preparatory Guidelines do not impose an additional burden as they are not inconsistent with the future Implementing Measures and Level 3 Guidance and are just to support preparation to the full application of these future requirements.</p>
10.	DIMA (Dublin Insurance & Management)	General Comment	<p>The current implementation programme envisages existing “Solvency I” regulatory requirements continuing during the interim measures phase. There will, therefore be several overlaps between the proposed interim arrangements and the current requirements, including, for example, those which prescribe roles for actuaries which will continue in force until Solvency II is fully implemented. It is important that requirements under the interim arrangements are not in conflict with the legislative requirements currently in force since this would place an unnecessary,</p>	<p>National competent authorities will seek to ensure a proper alignment of current requirements of Member States and the requirements of these preparatory Guidelines.</p>

			<p>overly burdensome set of requirements on regulated entities at a time when their objectives should be on an effective transition to becoming fully Solvency II-compliant.</p> <p>The actuarial function and its role are unclear at the moment, and this needs to be clarified in light of the previous comment.</p>	<p>There is relatively little potential for conflicts between the two.</p> <p>It is not the role of the actuarial function – which is quite clear from the Solvency II Directive - but the role of an Appointed or Responsible Actuary, where they exist, that needs to be resolved. But this is not an EIOPA responsibility. It is the Member States concerned which have to find a solution.</p>
11.	ECIROA	General Comment	<p>We emphasize our commitment to implement Sol II recognizing that it is more sophisticated than Sol I. We advise again to consider that the more descriptive the requirements are, the less room is left to the application of the Proportionality Principle because NCAs will implement even more tough and challenging rules which may reduce the opportunity and ability to apply guidelines in an appropriate way. EIOPA should determine haircuts to avoid a competition between the NCAs with the potential consequence of a flight to arbitrage advantages by choosing the “perfect” NCA.</p> <p>Captives are simple structures and therefore there is a limited number of persons involved in their daily management as well as in their strategic decision-making processes. This is consistent with the needs and the risks inherent to their middle/long term business issues and day-to-day operations.</p>	<p>EIOPA always carefully considers how specific it is appropriate for the Guidelines to be, taking into account proportionality. It is difficult to see how being more general could affect whether NCAs accept certain solutions by undertakings as appropriate or how a haircut could be</p>

			<p>Solvency II in general and Pillar 2 in particular provides captives with the opportunity to formalize and develop their organizational structure and daily operations, thus enhancing their existing controls.</p> <p>A key function, a control measure, and a report whether addressed to internal or external stakeholders, must be justified by the scale and complexity of the business. The materiality of the overall governance structure must be aligned with the materiality of the business.</p> <p>This also applies when considering the cumulation of functions by one single person or entity. Simple structures and businesses leave indeed very limited space for uncertainties and unconsidered actions enabling a single person or entity to address several issues in a coherent and robust way. The need to manage conflicts of interest is an important general point in relation to all governance roles, functions and activities but this should not lead to exaggerations</p> <p>Comments on the ORSA for captives</p> <p>As per governance issues, although we understand the necessity to address risk issues in a qualitative and quantitative manner over a certain period of time, one shall preserve the possibility for captives to treat qualitative and quantitative aspects of their risks in a way that is adapted to their culture and business. This means avoiding the imposition of strong and wide requirements at a European level. Based on the principle of proportionality and the inherent major differences between the types of undertakings on the insurance and reinsurance markets (from single-risk captives to multinational and highly-diversified insurance companies), the ORSA shall cover a wide range of approaches. And questioning the relevancy of the ORSA shall focus more on the quality of the justification than on the complexity of the chosen approach. This would both</p>	<p>determined.</p> <p>Please refer to the resolution to comment 2.</p> <p>Noted.</p> <p>For key functions and reports required by the Directive EIOPA disagrees.</p> <p>The accumulation of functions in one single person also raises the issue of appropriate control measures in order to address potential conflicts of interest.</p> <p>Proportionality applies and means taking the nature, scale and complexity of the risks inherent in the business into account. The "type" of the undertaking is not relevant. For the ORSA proportionality in particular is relevant with regard to the complexity of the chosen approach; the</p>
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			encourage all undertakings to play an active role in the implementation of the Directive and enable them to define along with local regulators a coherent and flexible model whose materiality is - once again - adjusted to the materiality of their respective business.	approach could be simple where the lack of complexity in the risks justifies this.
13.	FEE	General Comment	<p>FEE welcomes this paper as useful guidance to firms and supervisors. These new guidelines seems to be a significant step towards improving understanding of the governance requirements arising from Solvency II, building on prior consultations and guidance released by EIOPA. So, we believe that the early adoption of these principles will be of benefit to policyholders and shareholders. But, compared with the other new consultations released by EIOPA, this one is particularly vague about what they expect to be in place by the end of 2014. In order to clarify the priorities additional guidance is needed.</p> <p>As this Paper is addressed to, with the adopted version primarily intended to assist, national supervisors/regulators implement Solvency II detailed requirements in a harmonised and practical manner, the comments by the FEE - apart from an expression of support for that aim - may not be particularly "granular".</p>	<p>Noted.</p> <p>The Guidelines are to ensure appropriate preparation not pre-application. Accordingly, there is no prescribed status to be reached at the half-way point of the preparatory phase from EUIOPA's side. NCAs could decide to prioritize and set milestones.</p> <p>Noted.</p>
14.	Financial Reporting Council	General Comment	<p>The FRC is the UK's independent regulator responsible for promoting high quality corporate governance and reporting to foster investment. We are well qualified to respond to this consultation given our role in overseeing the actuarial profession.</p> <p>We set technical standards for actuarial work for insurers and IORPs. We set accounting and reporting standards for financial statements and for</p>	<p>Noted.</p> <p>Noted.</p>

			<p>the work of auditors. We are also responsible for the UK's Corporate Governance Code which sets out standards of good practice in relation to Board leadership and effectiveness, remuneration, accountability and relations with shareholders.</p> <p>We agree that it is sensible for EIOPA to propose these guidelines as a consistent approach to implementation of Solvency II will be beneficial to insurers and supervisors, as well as to practitioners and policyholders. However, we are concerned that the "glidepath" to implementation of Solvency II may influence investment decisions as insurers balance the potentially conflicting requirements of the current Solvency I based requirements against the currently uncertain Solvency II pillar 1 requirements with knock-on effects on the long term investment needs of the European economy more generally. Therefore, we suggest that before making a decision to publish the guidelines, EIOPA consider what the potential impact might be on investment and growth in the EU.</p> <p>We welcome the proposal to establish an actuarial function in preparing for Solvency II as we consider that actuarial information is helpful to the administrative, management or supervisory body (AMSB) of an insurer in making decisions concerning technical provisions, underwriting policy and reinsurance arrangements. In the UK, the FRC in its independent oversight role of the Institute and Faculty of Actuaries (IFoA) regulatory activity oversees the IfoA's practising certificate regime established for actuaries carrying out the actuarial function role in UK life insurers and for syndicate actuaries in Lloyd's. EIOPA might find this regime a useful precedent capable of extension to all actuarial function work. We will raise with the PRA and the IFoA its extension in the UK.</p>	<p>EIOPA does not see that the situation for undertakings would be any different if no preparatory Guidelines were issued. The Guidelines reflect what EIOPA expects undertakings to do in order to prepare themselves for the application of the Solvency II Directive.</p> <p>Noted.</p>
16.	French Federation of Insurance Companies (FFSA)	General Comment	The main Comment concern the guideline 49 in the following point 1.89	Noted.

17.	German Insurance Association (GDV)	General Comment	<p>We appreciate to have the opportunity to share our views on the proposal for guidelines on the System of Governance with you. Besides some remarks to certain paragraphs we would like to state the following:</p> <ol style="list-style-type: none"> 1. Section 2.6 of the Cover Note mentions the expectation that national competent authorities should “amend their legal framework” if this is necessary to comply with the Guidelines. In this regard, we would like to point out that any deficiencies in national legislation can only be cured by the legislator, not by the authority itself. This may take some time. The German Supervisory Authority is not permitted to amend the legal framework upon which the undertakings are supervised. 2. Although these preparatory guidelines might help to foster Solvency II implementation local legal requirements might end up with having some ambiguity about the binding character as long as Solvency II is not formal in force. The “comply or explain” option for the NCAs will be a challenge for the level playing field. 3. The principle of proportionality shouldn’t be restricted to SMEs please add that the fundamental principle is also the nature and complexity of the business – for SMEs as well as for large companies. 4. Please take care that guidelines across the blocks e.g. of the system of governance and the “Forward looking Assessment of the undertaking’s own risks” are consistent. Having a Medium-term Capital Management Plan (Guideline 32) in the System of Governance and forward looking assessments according to the planning period seems not to be appropriate. 5. Please do not identify organisational units and functions – 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. 	<p>Noted.</p> <p>Complying with these Preparatory Guidelines does not necessarily mean introducing new legal requirements but could be based on existing legal requirements and administrative rules (including supervisory circulars for instance).</p> <p>Disagree. It is not and EIOPA never claimed otherwise.</p> <p>EIOPA does not see an inconsistency. Not everything an undertaking should have on its radar does already require definite plans for a possible solution.</p> <p>This is Implementing Measures.</p>
18.	Groupe	General	GC is strongly supportive that EIOPA should include governance in its	Noted.

	<p>Consultatif Actuariel Européen</p>	<p>Comment</p>	<p>guidance and should strive for NCAs to converge in this aspect.</p> <p>The majority of GC's comments on System of Governance relate to Chapters III and VIII, Risk Management and Actuarial Function respectively. Actuaries work across a variety of roles at insurers and it is worth categorising this, for the discussion which follows.</p> <p>(a) Actuaries commonly work with other professionals in Risk Management and some CRO's have actuarial backgrounds (while others come from risk, regulatory or 'quant' and statistical training). Hence GC's interest in Ch.III.</p> <p>(b) Actuaries commonly also will work in future in what is classified by Art.48 as the "Actuarial Function". Hence GC's interest in Ch.VIII. Additionally we note that EIOPA in this CP, mostly in Ch.III has started to address how the interaction will function between Actuarial Function and Risk Management. This is welcome and GC would like to work together with EIOPA to explore this more. It is a complex topic and the practical solutions tend to vary by size, type and nationality of insurers and the actuaries involved.</p> <p>(c) For completeness it is also important to recognise that actuaries also work in areas and in roles that, in future, will neither be classified as Risk Management, nor Actuarial Function. In particular they may work in the 'first line' risk-taking operational areas of underwriting, pricing, reinsurance management or asset management – i.e. they are thus distinct from the 'second line' of Risk Management. Similarly they are distinct from the AF who must 'opine' on pricing and reinsurance, to take two examples.</p> <p>We comment in most detail in relation to Chapter VIII: Actuarial Function. We would seek to continue working closely with EIOPA on the detailed formulation to make AF most effective across the wide range of size, type and historical and cultural background to actuaries and insurers across the EU. In fact the development of the Actuarial Function will be evolutionary over many years ahead – notwithstanding efforts to write more or less prescriptive guidance. Not least are the constraints of the availability in different territories of suitable professionals (actuaries or not) to carry out the designated responsibilities of Risk Management and</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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			<p>the AF.</p> <p>In addition to Chapter VIII we have also offered up considerable comment on Chapter III: Risk Management.</p>	Noted.
19.	Institut des Actuaire	General Comment	<p>The Institute of Actuaries welcomes this CP. When the present CP extends the directive beyond a mere explanation, then it would be legally more comfortable to extend the legislation. (for instance organization of insurers). The implementation as at 1/1/2014 defers from the phasing in described in §4.3 of the cover note.</p>	<p>These preparatory Guidelines are not supposed to include new requirements in addition to the Solvency II Directive and the draft Implementing Measures. Instead these preparatory Guidelines inform about supervisory expectations as regards the application of the requirements of the Solvency II Directive and the draft Implementing Measures.</p>
20.	Insurance and Reinsurance Stakeholder Group (IRSG)	General Comment	<p>We agree with EIOPA that it is appropriate to propose preparatory guidelines in relation to requirements as to insurers' systems of governance. We have no difficulty with the judgments made as described in the section on impact assessment (although the guidelines with respect to derivatives are capable of being consolidated).</p> <p>We have considered the detail of the guidelines in terms of whether in our view:</p> <p>The degree of difference in standard across member states suggested a guideline was needed for sake of harmonization; and</p> <p>Whether a proposed guideline is clear and capable of being verified in implementation.</p>	<p>Noted.</p> <p>Noted.</p>

			<p>The guidelines are largely silent on the subject of reporting by the AMSB. Unless provided for elsewhere, we suggest that the following be included following paragraph 1.20:</p> <p>In accordance with Article 51 of Solvency II, national competent authorities should require the AMSB to report at least annually on the discharge of its functions both publicly and to specifically interested classes of stakeholder.</p> <p>Effective management of conflicts of interest is an important element of good governance. We suggest something like the following be added following paragraph 1.29:</p> <p>In accordance with Article 41 of Solvency II, national competent authorities should ensure that procedures are established and communicated by the undertaking for the identification and management of potential conflicts of interest in relation to governance.</p> <p>The guidelines appear to be silent on the importance of diversification of insurance risk. We suggest adding to Guideline 18 as set out below.</p> <p>We note that elements of these draft guidelines differ from corresponding texts issued by EBA even in relation to some generic and definitional matters. Such differences should be eliminated or clearly justified.</p>	<p>This does not fall within the remit of the System of Governance.</p> <p>This is expected to be covered by the draft Implementing Measures.</p> <p>Agree. EIOPA has added the aggregation of risk not in Guideline 18 but in Guideline 16.</p> <p>Noted. Please refer to the Feedback Statement, IRSG section.</p>
21.	Insurance Association of Cyprus	General Comment	<p>1. We believe it is not legally sound to require insurance companies to comply with guidelines which are not in line with the current national legal framework. In Cyprus the existing insurance regulatory framework (Solvency 1) is significantly different from Solvency II and in fact the national law transposing Solvency II would result in a complete new legal framework. Introducing a major part of Solvency II via EIOPA's Guidelines</p>	<p>A significantly different governance framework would not necessarily pose a challenge to the preparation for the new system. Since the</p>

			<p>necessitates a major overhaul of the existing regulatory framework. This will prove an extremely burdensome, complicated and lengthy legal process which will distract the industry' focus away from the implementation of a phase-in approach and towards the legal process for amending the laws.</p> <p>We favor a voluntary approach during this preparatory phase, with supervisory authorities seeking a commitment from the insurance industry to comply with guidelines. If this would not be the case then it is most important that sufficient time is allowed for the necessary amendments to the law to accommodate the guidelines.</p> <p>2. We do not support a requirement for undertakings to also comply with the contents of relevant draft Level 2 text. Clarification is requested on whether undertakings will, apart from the guidelines, also have to comply with the contents of the relevant Level 1 and Level 2 text.</p> <p>3. We do not support any requirements in the guidelines that involve Solvency II pillar 1 calculations concerning capital and technical provisions. This would be too burdensome and not appropriate for the preparatory stage. Solvency II pillar 1 should only apply when Solvency II is introduced in 2016.</p> <p>4. There are cases where the Guidelines and/or the explanatory text go further than what is provided in the relevant Solvency II articles. EIOPA should ensure that this is avoided and also that the content of the Guidelines and the explanatory text are fully consistent with SII. An explicit clarification on the status of the explanatory text would be</p>	<p>Guidelines reflect good practice it seems unlikely that anything required by the preparatory Guidelines would constitute a breach of your national law. Only in that case would you have to wait for the transposition of requirements into national law.</p> <p>Undertakings will of course have to prepare for compliance with Level 1 and Level 2 – once this is published – by the time Solvency II starts.</p> <p>Please refer to “Enforcement measures and supervisory actions” of the Feedback Statement.</p> <p>EIOPA is satisfied that the Guideline and the Explanatory Text are fully consistent with</p>
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			<p>welcomed.</p> <p>5. We believe that it would be very beneficial if EIOPA requests national supervisors to engage in a dialogue with insurers in their respective markets with an aim to agree on a clear timetable concerning what they concretely expect from undertakings to have in place at different stages during the preparatory stage until 2016.</p>	<p>Solvency II requirements. The Explanatory Text provides additional information and explanations that help to understand how the Guidelines are to be understood.</p> <p>EIOPA does not require that there should be a time table. It is up to the NCAs to decide whether they consider applying a kind of a timetable for complying with different aspects of the preparatory guidelines.</p>
22.	Insurance Europe	General Comment	<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 that national competent authorities should ensure that undertakings have in place certain elements of the Solvency II framework during the preparatory phase, the Guidelines</p>	<p>Noted.</p> <p>Please refer to "Purpose of the preparatory phase" of the Feedback Statement.</p> <p>Please refer to "Purpose of the preparatory</p>

			<p>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.</p> <p>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.</p> <p>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.</p> <p>We list below some specific comments - the comments apply to both individual and group level - that we believe EIOPA should take into consideration.</p> <ul style="list-style-type: none"> - Overall it is difficult to understand if undertakings are required to 	<p>phase" of the Feedback Statement.</p> <p>It is not clear what an outcomes based approach entails. The principle of proportionality includes that an undertaking can, taking into account the nature, scale and complexity of the risks inherent in its business, choose to proceed where applicable any appropriate approach provided that the aim of the requirement will sufficiently be achieved.</p> <p>Please refer to "Status of the Solvency II Directive and the Implementing Measures" in the Feedback Statement.</p>
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			<p>comply with Level 1 and draft Level 2 requirements in addition to these Guidelines during the preparatory phase.</p> <p>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.</p> <p>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 implemented on a convergent manner.</p> <p>Besides being ambiguous, this approach also leads to the introduction of a level of detail that is not appropriate.</p> <p>- The roles and responsibilities of functions are overly prescriptive and are not appropriate for the preparatory phase.</p> <p>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.</p> <p>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</p>	<p>EIOPA has added no prescriptions to those already contained in the Directive. The Level 1 requirements can be implemented at any time but EIOPA does not require an implementation before the transposition date.</p> <p>Provided they also respect the distribution of tasks and responsibilities set out in the Directive they are allowed to do so.</p>
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			<p>-Fulfilment of fit and proper requirements by all persons employed by the service provider or sub service provider.</p> <p>-</p> <p>Application of outsourcing requirements to activities other than critical or important activities of the key functions.</p> <p>-Whistle blowing role of the internal audit and rotation of staff assignments.</p>	<p>the service provider who perform an outsourced key function which is something quite different.</p> <p>The outsourcing requirements apply to outsourced critical or important functions. This includes outsourced key functions since key functions are always critical or important. "Critical or important functions of the key functions" seems to be a misreading of the Directive.</p> <p>The Guidelines do not require whistle-blowing or staff rotation, these issues only have to be considered in the internal audit policy, i.e. it has to be considered whether this would be appropriate for the undertaking. EIOPA has changed the text to clarify this common misunderstanding.</p> <p>The ORSA is part of the risk management system which is part of</p>
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			<p>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.</p> <p>-</p> <p>It is difficult to fully understand how to cater for proportionality and flexibility.</p> <p>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.</p> <p>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.</p> <p>- The status of the explanatory text is unclear.</p>	<p>requirements at the start of Solvency II.</p> <p>EIOPA does not envisage that proportionality will be much of an issue in the context of outsourcing.</p> <p>The Cover Note serves to explain the phasing-in sufficiently. NCAs have no need to have this spelt out in each and every Guideline. The convention for Guidelines is not to repeat Level 1 or 2 so repeating the proportionality principle is not an option.</p> <p>Please refer to “Status of the Explanatory Text” in the Feedback Statement.</p> <p>The Explanatory Text is outside the scope of the consultation. [Parked former GL need to be removed.]</p> <p>Noted.</p>
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23.	Insurance Ireland	General Comment	<p>Insurance Ireland broadly welcomes the draft Guidelines and their aim of promoting a consistent structure across Europe in advance of the implementation of Solvency II. This consistency is particularly important for insurers operating on a cross border basis.</p> <p>Please clarify, for the avoidance of potential confusion, that it is intended that the Guidelines and the Directive will apply on a stand-alone basis and that draft Level 2 and Level 3 guidance which may have been circulated previously are not relevant under the interim regime. It would also be helpful if it could be confirmed that Level 2 and Level 3 guidance finalised during the interim phase would not impact on the interim regime.</p> <p>Some (re)insurance entities may be planning a revised organisational</p>	<p>Noted.</p> <p>The Solvency II Directive is in force but not applicable yet. Cross-reference to the Solvency II Directive is relevant. The preparatory guidelines on purpose do not cross reference to the draft Implementing Measures as these are still subject to negotiations between trilogue parties.</p>

			structure with effect from the full implementation of Solvency II to optimise capital efficiency. Local NCAs should have the flexibility to anticipate these changes when applying the guidelines.	Noted.
24.	International Underwriting Association of London (IUA)	General Comment	<p>Pending finalization of the implementing measures, we do not believe that the guidelines should extend prescriptive requirements beyond those of the Framework Directive. It will be necessary to avoid imposing new layers of regulation when national regulation and Solvency I are still in effect. It is not clear to us whether national governments and regulators are expected to change laws and regulations or whether the guidelines should sit alongside existing laws and regulations.</p> <p>We also believe that it will be important in the preparatory phase for the NCAs to act proportionately and not to expect firms to provide detailed reports for which they cannot yet be prepared or which will not of great value prior to full introduction of Solvency II.</p>	<p>Please refer to “Enforcements measures and supervisory actions” in the Feedback Statement.</p> <p>Noted.</p>
25.	Investment & Life Assurance Group Limited (ILAG)	General Comment	<p>ILAG is a trade body representing members from the Life Assurance and Wealth Management industries.</p> <p>ILAG members share and develop their practical experiences and expertise, applying this practitioner knowledge to the development of their businesses, both individually and collectively, for the benefit of members and their customers.</p>	<p>Noted.</p> <p>Noted.</p>
26.	Lloyd’s	General Comment	<p>Lloyd’s is generally supportive of EIOPA’s approach to preparation for Solvency II and agrees that there are benefits in seeking consistency across member states in those preparations. It is sensible for EIOPA’s guidelines to focus on Pillar 2 preparatory measures and for NCAs to ensure that undertakings take steps towards implementing relevant aspects of the regulatory framework.</p> <p>Lloyd’s main general concern about the Guidelines on the system of governance is that they are not completely aligned with the Level 1 text (Directive 2009/138/EC; articles 41 to 50 – referred to in this document</p>	<p>Noted.</p> <p>This is a consequence of the specification of</p>

			<p>as “the Directive”). There are three consequences:</p> <ul style="list-style-type: none"> - The Guidelines constitute a somewhat eclectic mixture of high-level and detailed requirements. Many of the detailed requirements are drawn from draft level 3 guidelines and technical standards that have not yet been publicly consulted upon; consequently undertakings may have legitimate reservations over the precise form that these measures take and may question the extent to which they really give effect to higher-level Level 1 principles. Applying these detailed requirements to undertakings before Solvency II comes into force is not therefore always appropriate. - Although every paragraph commences with a reference to a Directive Article (“In accordance with Article xx...”), it is sometimes rather a stretch to see the connection between the Article referred to and the detailed requirement being imposed. - It is not clear whether, in the interim period prior to full Solvency II implementation, undertakings are expected to comply with the Guidelines only or additionally with the Level 1 and draft Level 2 requirements on which they are based. Often the Guidelines do not explicitly require NCAs to apply a Level 1 requirement to undertakings, but do require NCAs to apply measures that pre-suppose a Level 1 requirement is in force. Further details are given in comments on the appropriate paragraphs. <p>We would therefore prefer the Guidelines to be based more closely on the Level 1 text, making clear which of those requirements NCAs should seek to apply pre-Solvency II implementation and providing guidance on what compliance with them entails.</p> <p>We have concerns over the Explanatory Text (paper 13/26). There is certainly a role for an explanatory text which, in the words of the Cover</p>	<p>principles-based requirements that avoids repetition of the text on which the specification is based.</p> <p>Please refer to “Status of the Solvency II Directive and Implementing Measures” in the Feedback Statement.</p> <p>Please refer to “Status of the Solvency II Directive and Implementing Measures” in the Feedback Statement.</p> <p>Noted.</p> <p>Noted.</p> <p>Please refer to “Status of the Explanatory Text” in the Feedback</p>
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			<p>note, "provide additional information and examples which may be useful to stakeholders". However, the Explanatory Text goes beyond this and contains numerous additional prescriptive requirements.</p> <p>Explanatory Texts should not be used to impose additional regulations, particularly as they do not form part of the public consultation so are not open to challenge. We suggest that they are reviewed and revised, to ensure that they fulfil their stated objectives of providing "additional information and examples". They should explain the requirements set out in the Guidelines, rather than operating as a second level of detailed rules.</p>	Statement.
28.	MGM Advantage	General Comment	<p>The Cover Note for the Consultations provided a very clear explanation that the purpose of the Guidelines, if adopted by National Competent Authorities, was to put in place a process for monitoring how insurers were progressing towards the eventual requirement to comply with the final requirements of the Directive. This is made clear in paragraphs 1.5, 4.2 (second bullet point) and 4.6. However the Guidelines themselves do not always make this clear. We would therefore welcome the inclusion within the actual Guidelines of similar language and clarity of purpose as is set out in the Cover Note.</p>	<p>Noted.</p> <p>Please see the resolution to comment 22.</p>
29.	MSV Life	General Comment	<p>We feel that the Level 2 text placed more emphasis on the importance of the principle of proportionality when referring to the insurers' System of Governance.</p>	<p>Please refer to "Principle based approach and proportionality principle" in the Feedback Statement.</p>
30.	Munich Re	General Comment	<ol style="list-style-type: none"> 1. Our comments refer, as requested by EIOPA, to the Guidelines and not to the Explanatory Text. Although the Explanatory Text is not subject to the public consultation we would like to point out that the Explanatory Text contains requirements that we do not share or agree with. 2. In general, we welcome an early preparation for the application of Solvency II with regard to the governance requirements that are not controversial on political level. However, any pre-emption of the Trilogue or Level 2 results in the context of the Guidelines should be avoided. 3. Market participants as well as the NCAs should be given sufficient time for preparation and an appropriate implementation of the Guidelines 	<p>Noted.</p> <p>Noted.</p> <p>The preparatory phase will last until Solvency</p>

			<p>assuring a level playing field. With regard to the finalization of the quantitative requirements envisaged for autumn this year the timeframe for preparation and implementation is very ambitious.</p> <p>4. Organizational requirements concerning the key functions: Whilst we agree with the necessity that internal audit has to be objective and independent from the operational function, but we do not think this is also a necessity for the other key functions, mainly risk management, actuarial and compliance. These 3 functions are part of the so-called 2nd line of defense and therefore we see no conflict of interests, as long as they are strictly separated from the first line of defense where risk-taking occurs. A combination of 2 or even all 3 of these functions should therefore be possible. In addition, it remains unclear where conflicts of interests could arise between these 3 functions and why these conflicts of interests should be proportionate to the size and complexity of the risks. We therefore think that the interim Guidelines should be phrased in a way that the organizational structure within the 2nd line of defense is kept flexible. In addition, we already see overlaps in the tasks described for the risk management function and for the actuarial function in the interim Guidelines (especially when assessing the Explanatory Text). This could be an indicator where the integration of certain tasks appears reasonable.</p>	<p>II is applicable. EIOPA cannot change that.</p> <p>Strict separation from what you call the first line of defence is what operational independence means. Only the internal audit function has to be fully, i.e. even more, independent (from other key functions and impairing influences from management).</p> <p>The separation of the key function reflects expected Implementing Measures requirements. The issue is not a conflict of interests.</p>
31.	NFU - Nordic Financial Unions	General Comment	<p>Summary of main points</p> <ul style="list-style-type: none"> <input type="checkbox"/> Diversity on company boards through employee representation is a key issue for sound and long-term oriented corporate governance <input type="checkbox"/> 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 <input type="checkbox"/> 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 	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

			<p>General comments</p> <p>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.</p> <p>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.</p> <p>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:</p>	<p>Noted.</p> <p>Noted. This is however</p> <p>up to national law and codes of corporate governance.</p> <p>Noted.</p>
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			<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>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
32.	Nordea Life & Pensions	General Comment	<p>Nordea Life & Pensions supports the need for a consistent and convergent legal framework across Groups and in all countries involved to ensure the wanted effect from implementing Solvency II. Consistency and coherence should also apply for the Guidelines.</p> <p>Key Functions & proportionality: Consider if a full Actuarial Function should be required in Holding companies (not having any insurance contracts), when implemented in the solo entities. If Internal Audit is already in place, the guidelines should lead to an adjustment of the internal Audit mandate & tasks, not to establish a new function.</p>	<p>Noted.</p> <p>Upon implementation of Solvency II, the group as well as the insurance and reinsurance undertakings will have to meet the system of governance requirements of the Solvency II Directive. It is not possible to dispense with key functions on account of proportionality or to change their mandate from the Solvency II Directive requirements. However, it is the decision of the group to</p>

				decide on the most appropriate way to meet the requirement at group level and which entity of the group is better placed to do perform governance requirements for the group.
33.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	General Comment	<p>Timeline for the Guidelines Implementation</p> <p>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 proportionate to the aim of the regulations.</p>	<p>The time line for the implementation of Guidelines can obviously not extend beyond 1 January 2016 as the expected start of Solvency II. Other than that there is no “time table”for the implementation of System of Governance Guidelines and NCAs are able to take proportionality into account. Undertakings have to ensure that they can calculate and meet Pillar I requirements at the start of Solvency II. EIOPA does not consider that this can be done without doing the calculation at least once before the Solvency II starts. Insofar the costs this generates are</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 two months, following issuance of the guidelines (the date of issuance of the</p>	<p>necessary for preparation and serve the purpose of these Guidelines. EIOPA does not see how step-by-step implementation could be too burdensome as step-by-step is supposedly how undertakings would implement anyway if left to their own devices.</p> <p>NCAs and undertakings are certainly well advised to consider whether it really is a good idea to waste precious time waiting for final results instead of getting started with the preparation for implementation immediately even if it is still possible that some changes will be introduced to the Guidelines.</p> <p>The final date when all requirements resulting from Guidelines are to be implemented is 1 January 2016.</p>
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			<p>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. 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?</p> <p>Consistency Across Financial Sector Regulators</p> <p>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</p>	<p>Detailed instructions for Guideline implementation would not be in line with the principles-based approach but NCAs could choose to give some further guidance in line with the common understanding reached in EIOPA as to how Directive requirements are to be interpreted.</p> <p>The suggestion has great merit in principle but goes beyond the</p>
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			<p>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).</p> <p>Basis for Guidelines Implementation</p> <p>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.</p>	<p>scope of the present exercise.</p> <p>The proportionality principle does not give this kind of discretion as proportionality cannot change requirements but only affect how the requirements can be implemented.</p> <p>Legally binding national requirements will not be affected; undertakings still have to comply with them during the preparatory phase.</p>
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			<p>Annual Progress report</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>	<p>EIOPA will explain this again in the Feedback Statement.</p> <p>The assumption that the comply-or-explain mechanism requires the analysis of the compliance of each undertaking individually is not correct. The progress report does not require such detailed analysis either.</p> <p>These are preparatory guidelines. At the moment some competent authorities already monitor compliance with Solvency II requirements and request undertakings to provide plans and evidence to have these functions in place by the time the Solvency II Directive will be applicable. Moreover, Member States may already have in place regulatory systems that</p>
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				require such functions to be in place.
34.	ROAM- Réunion des Organismes d'assurance mutuell	General Comment	<p>Un certain nombre de notions et de concepts figure au Consultation Paper (AMSB, deux personnes impliquées, fonctions clés..). Leur application découle d'une transposition en droit français basée sur les travaux déjà entrepris par la Direction du Trésor (GT5) pour lesquels un consensus de place a été obtenu. Particulièrement, la notion d'AMSB dont les pouvoirs et attributions seront alloués selon les cas au Directeur général ou au Conseil d'administration selon leur caractère opérationnel ou de contrôle.</p> <p>Il est important pour la ROAM que l'autorité de contrôle et le régulateur français conservent bien à l'esprit ces acquis pour l'application de ces guidelines au niveau français. Même si l'EIOPA n'est pas directement concernée par ces remarques, il est important de le souligner.</p> <p>Par ailleurs, les guidelines, quand elles se réfèrent à un « groupe » doivent préciser que la définition « groupe » est conforme à celle donnée par la directive SII : incluant les entreprises relevant du champ d'application du contrôle de groupe conformément aux articles 212 et 213 .</p> <p>Chaque fois que les guidelines font référence à un article de la directive SII, il conviendrait de rappeler que leur mise en œuvre se fait conformément au principe de proportionnalité.</p>	Agree.
35.	RSA Insurance Group	General Comment	<p>Most of the requirements in these guidelines will in due course be contained in the Level 2 text which is expected to be issued for consultation and finalised in 2014. As soon as the Level 2 text is available, undertakings will naturally need to prepare to comply with the rules as stated in the Level 2 text. To the extent that any of these guidelines is inconsistent with the Level 2 text, these guidelines will be superseded. The introduction to these guidelines should make clear that this is the case.</p>	The preparatory Guidelines are designed in such a way that according to EIOPA's knowledge they are not, nor are expected to be, inconsistent with the draft Implementing Measures that are still

			<p>Our comments are on the basis that the guidelines are being put in place as preparation for the implementation of Solvency II (as stated in paragraph 1.6) rather than actual implementation and that what is required is for undertakings “to progress in their preparedness for Solvency II over time during the course of the preparatory phase” (as stated in paragraph 4.3 of the Cover note for the Consultation on Guidelines) rather than to achieve full compliance ahead of the implementation date.</p>	<p>subject to negotiations between the trilogue parties.</p> <p>Noted.</p>
36.	The Bermuda Monetary Authority	General Comment	<p>The Bermuda Monetary Authority (BMA or Authority) appreciates the opportunity to comment on the Consultation Paper on the Proposal for Guidelines on the System of Governance (CP). The BMA is an integrated regulator and supervisor of financial institutions that includes (re)insurers of varying size and levels of complexity conducting a wide range of business activities and utilising diverse business models. As the regulator and supervisor of a diverse selection of (re)insurers and insurance groups, the Authority appreciates the importance of a flexible and proportionate approach to regulation and welcomes EIOPA’s recognition of the need for such an approach to governance.</p> <p>The Authority welcomes the development of a consistent and convergent approach to governance. With respect to the preparation for Solvency II Bermuda is one of the “first wave” of countries who are seeking equivalence of its regulatory and supervisory regime with that of Solvency II, and is pleased to see guidance being offered in the area of governance, and supports the proposals to enhance systems of governance in the interim before full implementation of Solvency II.</p> <p>We believe guidance in relation to third countries is particularly important for groups in order to avoid the problem of having duplication of efforts.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
37.	The European Confederation of Institutes of Internal Auditing (ECIIA)	General Comment	<p>The ECIIA (The European Confederation of Institutes of Internal Auditing) would like to thank EIOPA for the opportunity to comment on the Consultation paper 13-008.</p> <p>As the representative of the profession of internal auditors in Europe ECIIA very much appreciates the important role Solvency II and EIOPA</p>	<p>Noted.</p>

			<p>allows to Internal Audit in the system of governance. ECIIA is happy to support EIOPA in this task to any extent; following comments are consistent with the position paper named "The role of internal audit with Solvency II" prepared by ECIIA.</p> <p>ECIIA's comments are consequently focused only in Internal Audit guidelines that provide a definition of Internal Audit completely in line with the Professional Standards issued by The Institute of Internal Auditors (The Global IIA). However, we think that the role of Internal Audit can be more precise to reach a level of granularity similar to the roles and responsibilities of the other key functions, such as risk management and actuarial function. Otherwise the reader might get the impression that EIOPA gives these functions a greater emphasis. We therefore recommend in general, that all key functions are treated in a similar way. Furthermore it eases the reading and the understanding of the guideline, if all chapters and the guidelines regarding the key functions follow a similar structure and uses the same wording. In the delineation of the specific roles and responsibilities of each function, ECIIA suggests a reference to the "three lines of defence model". This model is more and more recognised as an international benchmark to effectively coordinate different organisational function toward a comprehensive risk management system (permanent controls carried out by the business lines as first line; providing guidance and monitoring through Risk Management, Compliance and Actuarial Functions as second line; auditing the other two lines to grant assurance by Internal Audit as third line of defence).</p>	<p>The preparatory guidelines are designed in such a way as not to repeat what is already covered by international standards on for instance Internal Audit. The guidelines add on what is supposed to be specific for the insurance sector within the context of the Solvency II Directive.</p> <p>On purpose, EIOPA did not want to advocate any specific model. Neither has this been done as regards for instance the Guidelines on compliance and internal control.</p>
38.	ASSOCIATION OF BERMUDA INSURERS AND REINSURERS (ABIR)	Introduction General Comment	<p>1 ABIR fully understands why EIOPA considers that European firms and groups need now to undertake active preparations for the Solvency II regime. It is unlikely to come into force until 2016, but its success requires an active preparation process and for that process to be managed in a reasonably consistent way across Europe.</p> <p>2 On the other hand care needs to be taken in the application of any</p>	<p>Noted.</p> <p>The preparatory Guidelines cover areas of the Solvency II Directive that are not supposed to be</p>

		<p>interim regime to ensure that it is not unduly burdensome. It should take account of the fact that the level 1 text is not fully settled. The level 2 rules and much of the level 3 and 3.5 material is yet to be settled and published.</p> <p>3. In particular the full details of the equivalence and interim equivalence regimes is yet to be settled. That said, so far as Bermuda is concerned, the preparatory work of EIOPA strongly suggests that Bermuda will be recognised as equivalent.</p> <p>4. The Solvency II regime may ultimately have some degree of extra-territorial effect, depending on which non-European regimes are recognised as equivalent. It is wholly inappropriate for that extra-territoriality to be applied on an interim basis, especially in jurisdictions such as Bermuda which are likely to achieve recognition as equivalent. Only European firms should be subjected, directly or indirectly, to requirements at this stage which require any degree of adaptation to the Solvency II regime.</p> <p>5. The preparations which European firms and groups may be required to make for Solvency II require them to provide information concerning non-European operations. At this interim stage it is disproportionate to do anything other than accept information by reference to relevant non EEA rules and in such format as non EEA firms are able to generate from their existing systems. This should be clearly recognised in the EIOPA guidelines. Otherwise non EEA firms may be subject to a patchwork of different requirements depending on how each national supervisor chooses to apply EIOPA's interim guidelines.</p> <p>ABIR is of the opinion that EIOPA should be consistent in its approach across all of the Guidelines and allow groups to use the local group statutory requirements in order to avoid a burdensome approach. We understand why EIOPA may be hesitant to pre-empt the decision of the Commission relative to equivalence but believe there is an opportunity to recognize and acknowledge those jurisdictions that have already been approved by the Commission for equivalent assessment and in this</p>	<p>controversial. Noted.</p> <p>Please refer to "Application to third countries" of the Feedback Statement.</p> <p>Noted: these Guidelines are not applicable for groups headed in a third country (equivalent or not).</p>
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			<p>regard, have already undertaken a detailed assessment by EIOPA. However, since EIOPA considered the option of the assumption of equivalence for third countries we would propose that those countries already approved by the Commission for assessment of equivalence and already undertaken an EIOPA assessment be granted "conditional equivalence" for the purposes of the guidelines given they are preparatory in nature and not for the full application of Solvency II.</p> <p>We would respectfully request at a minimum that General Guidelines be issued relative to a proposed approach that recognizes and acknowledges third country group supervisors and in particular those third country group supervisors that have already been approved by the Commission for equivalence assessment. Without a common approach, national competent authorities will be left to decide how they will apply the guidelines relative to third country groups and the inconsistencies will prove both burdensome and inefficient.</p>	
39.	DIMA (Dublin International Insurance & Management)	Introduction General Comment	<p>When dealing with groups, it is unlikely that every EU jurisdiction will be equally implementing these guidelines; this becomes even more of an issue, and probably impractical, where the group extends outside the EEA. Thus it will become severely challenging to apply the guidelines "at the level of the group".</p>	<p>The requirements apply to the entity responsible for fulfilling the governance requirements at group level and according to the regulation of the EEA country where the parent undertaking is</p>

				licensed. There is no problem of inconsistency then. The requirement does not apply to the parent outside the EEA.
40.	German Insurance Association (GDV)	Introduction General Comment		
41.	Insurance Europe	Introduction General Comment		
43.	ROAM- Réunion des Organismes d'assurance mutuell	1.1	Est il possible d'envisager une application progressive pour les groupes en commençant par les entités solo? (Cf également 1.92 et suiv)	Noted.
44.	CRO Forum and CFO Forum	1.2	The scope of this requirement is too big; it includes also the prudent person principle and governance of own funds. We would suggest that Articles 93 and 132 not apply until SII is in force.	Disagree. On purpose, EIOPA included the application of the prudent person principle as there is a direct link with article 44 of the Solvency II Directive.
45.	German Insurance Association (GDV)	1.2	The scope of this requirement is too wide; it includes also the prudent person principle and governance of own funds. We would suggest that Articles 93 and 132 not apply until SII is in force.	Please refer to resolution of comment 44.
46.	Insurance Europe	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.	Please refer to resolution of comment 44.
47.	Powszechny	1.2	The guidelines cover the provisions on the system of governance set out	Please refer to

	Zakład Ubezpieczeń Spółka Akcyjna		<p>in articles 40 to 49, 93, 132 and 246 of Level 1 Directive:</p> <ul style="list-style-type: none"> - General governance - Fit and proper requirements - Risk management - The prudent person principle - Governance of own funds - Internal controls - Internal audit function - Actuarial function - Outsourcing, and - Group specific governance requirements <p>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.</p>	<p>resolution of comment 44.</p> <p>EIOPA considers it important that undertakings start paying attention to the processes and procedures necessary to ensure the eligibility of own funds under Solvency II.</p>
48.	MetLife	1.3	MetLife is a keen proponent of the Single Market and related attempts to harmonise legislation across Europe. We therefore agree with EIOPA that it is vital for joint and consistent preparatory actions to be taken at a European level to maximize the benefits of a harmonized approach.	Noted.
49.	NFU - Nordic Financial Unions	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.	Noted.
50.	ACA	1.4	Potential impact of overlapping regimes. While Solvency 1 is still in force Guidelines require introducing Solvency-II in the decision making processes. Companies should demonstrate that capital adequacy is part of their strategic decision making process we do not believe it can be expected by the regulator to see decisions taken in the companies on the	EIOPA disagrees. The nearer Solvency II draws the more undertakings have to consider the impact of

			basis of a regime that is not yet in force. The concept of preparation is fundamental here.	Solvency II on their decisions. A decision that is good under Solvency I could be bad under Solvency II and undertakings cannot ignore that.
53.	MetLife	1.4	The Guidelines are meant to help NCAs and undertakings to prepare for Solvency II. EIOPA suggests that the Guidelines should be applied in a manner that is both proportionate and practical and allows for some flexibility. We would endorse this. MetLife is restructuring its European operations in such a way that most of our subsidiaries will become branches of MetLife Europe Limited. This restructuring is expected to be complete prior to the effective date of Solvency II. Given that regulatory requirements differ for subsidiaries and branches, we would ask that NCAs are mindful of EIOPA's flexible approach to the Guidelines and consider the structure of our operations as they will be upon full implementation of Solvency II.	Noted.
54.	NFU - Nordic Financial Unions	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.	Noted.
55.	Nordea Life & Pensions	1.4	Nordea Life & Pensions supports the approach that it's a need for consistent and convergent legal framework in all countries involved. The guidelines should be prepared in a way that the local differences should be avoided. Solvency II will only get the wanted effect if the implementation is consistent in all involved countries.	Noted.
58.	ACA	1.6	Lack of clarity between guidelines and explanatory text. It is important that guidelines provide a framework to encourage activities rather than require activities that are consistent with the intended outcomes of Articles 41-50. An example is Guideline 9 about Policies as currently drafted. There is sometimes a lack of clarity around the distinction	Please refer to " Status of the Explanatory Text" of the Feedback Statement

			between the explanatory text and the guidelines. The explanatory text (which is not part of the consultation) should provide some context and potential examples but is currently written as a requirement (rather than illustrative).	
59.	Groupe Consultatif Actuariel Européen	1.6	Actuaries work across risk management, technical provisions and capital models and therefore the governance framework is very important to GC. GC agrees in principle that EIOPA's efforts to manage convergence in the interim period should include the topic of governance	Noted.
60.	Institut des Actuaire	1.6	It is not clear at what date undertakings will have to comply .Suggestion : add at the end « To comply by January 1st, 2016 . As the cover note specifies it in §4.3, implementation of governance needs a progressive phasing in.	EIOPA will amend to "to full implementation".
61.	MetLife	1.6	The Guidelines are to be put in place « from 1st January 2014 » - with the key word being FROM and that the purpose of the Guidelines are to encourage demonstrable progress during 2014 and 2015 toward capability of full compliance on effective date – assumed to be 01/01/2016. We would stress that entities are allowed to demonstrate progress throughout the preparatory phase.	Noted.
62.	NFU - Nordic Financial Unions	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.	Not really, what is to be taken into account in the performance of "old" tasks will change and some new task may be added. But there is not a lot of potential for "double work" that will cease to exist once Solvency I is no longer applicable. It is up to NCAs and undertakings that they have sufficient human

				resources to deal with any material additional workload.
63.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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?	The preparatory Guidelines do not contain a concrete time schedule and milestones for implementation of the Preparatory Guidelines.
64.	ROAM- Réunion des Organismes d'assurance mutuell	1.6	EIOPA's guidelines ne devraient pas dire ` « NCA should put in place », ceci donne l'impression d'être une obligation légale. Il conviendrait de formuler plutôt de la façon suivante : "NCA are invited to put in place pursuant to article 16, 3 of the EIOPA regulation"	Disagree. Under EIOPA regulation EIOPA has the power to draft Guidelines addressed to NCAs.
65.	Deloitte Touche Tohmatsu	1.7	We believe yearly reports by February may not be frequent enough if the goal is a "checkpoint" to assess progress on the application of the guidelines. This is in particular true if Solvency II is implemented in 2016 (only one "checkpoint" in 2015 will be considered) or 2017 (only two "checkpoints"). We suggest EIOPA request a summary report by July of each year, in order to better assess the progress of harmonization and discuss any issue with NCAs (such as varying pace of implementation, divergence in the application of the guidelines, etc.). We also suggest that EIOPA gives a high-level content for the progress report. A simple option being the organization of the report along each guideline.	Disagree. This is the result of discussion in EIOPA. This is the intention but that is an internal matter between EIOPA and the NCAs.
66.	ECIROA	1.7	Deadline consultation paper : June 19,2013 Deadline definitive document : end of 2013 If the National competent authorities have to put in place the guidelines as set out in this document from the 1st January 2014, it is not possible for the undertakings to be compliant starting from the same date.	EIOPA realises this.

			Undertakings shall thus be able to comply with these preparatory guidelines in a progressive manner, keeping in mind the expected date of Solvency II full entry into force.	Agree.
67.	German Insurance Association (GDV)	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.	EIOPA members agreed that they would prepare such reports.
68.	Groupe Consultatif Actuariel Européen	1.7	This CP and the other three EIOPA CP's set out timetables between EIOPA and the NCAs but we would like to see rapidly more clarity about timings at insurers (and hence for the activities of management including actuaries inside insurers). A clear understanding should emerge of how gradual or accelerated implementation must be through 2014 to 2016. In practice governance needs a progressive phasing-in to be most effective.	EIOPA will not prescribe a time table and NCAs are not required or expected to provide one either. They could choose to make known where they see priorities but could also leave it to undertakings to decide how best to proceed.
69.	Insurance Europe	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.	Please refer to the resolution to comment 67.
70.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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?	No. All procedures and policies have to be fully implemented by 1 January 2016 at the latest.
71.	ROAM-Réunion des Organismes d'assurance mutuell	1.7	Ces rapports devront être publics, conformément à l'article 16,3, al.3 du règlement instituant l'EIOPA : « L'Autorité publie le fait qu'une autorité compétente ne respecte pas ou n'entend pas respecter cette orientation ou recommandation. L'Autorité peut également décider, au cas par cas, de publier les raisons invoquées par l'autorité compétente pour ne pas respecter l'orientation ou la recommandation en question. L'autorité compétente est avertie, au préalable, de cette publication." (cf. également commentaire au 1.15)	Noted.

72.	Association of Financial Mutuals	1.8	We welcome the comment from EIOPA that the new restrictions on investment management will not apply until Solvency II becomes fully operational. We question whether firms will be able to bring in the prudent person principle and not run into differences with the existing investment control regime.	Disagree. The Solvency II prudent person principle requirements as such are not inconsistent with the current Solvency I requirement, except that Solvency I requirements include a number of regulatory limits, that do not exist anymore under Solvency II. Please, refer to the last sentence of para 1.8 as well.
73.	CRO Forum and CFO Forum	1.8	Having to introduce additional constraints on top of the existing regime for managing investments seems unpractical, especially because both regime (Solvency II and Solvency I) can lead to different decisions in some cases. We would prefer that the requirements applies to firm only on ad-hoc basis requiring firm to review their portfolio on a regular basis and assess the impact of Solvency II on their composition and on the level of associated risk.	Please refer to the resolution to comment 72.
75.	Insurance Europe	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.	Please refer to the resolution to comment 72.
76.	MGM Advantage	1.8	We welcome the comment from EIOPA that the new restrictions on investment management will not apply until Solvency II becomes fully operational. We question whether firms will be able to bring in the prudent person principle and not run into differences with the existing investment control regime.	Please refer to the resolution to comment 72.

77.	ROAM- Réunion des Organismes d'assurance mutuell	1.8	Ce paragraphe est peu clair, il demanderait à être reformulé.	Since you did not explain what you consider to be unclear, EIOPA did not see how it could accede to your request.
78.	AMICE	1.9	Actuarial function EIOPA states that the tasks of the actuarial function during the interim phase are related to the submission of interim information and that there is no full framework for technical provisions valuation during this period. The lack of clarity leaves ambiguity over the criteria to be followed in the calculation of technical provisions during the interim phase.	The assumption is that the criteria will be in place by 2014. However, it is important that undertakings prepare on the basis of what is already known.
79.	Aon Ltd	1.9	The separation between coordination of (including the oversight of the quality of the TPs) and performing the Technical Provisions is not sufficiently clear and implies a higher number of resources than may currently exist in small and medium insurers. It is also unclear how they will perform their obligations under the interim requirements whilst Pillar I requirements are still to be confirmed. This suggests duplication of efforts and generates additional resource pressure at a time where experienced actuarial resource is scarce.	The regulation of the actuarial function in the Solvency II Directive inherently contains the issue of a conflict of interest between operational and controlling tasks. The preparatory Guidelines address this issue. It is up to the undertaking, taking into account the nature, scale and complexity of the risks inherent to its business to organise itself in such a way that this conflict of interest is dealt with in an appropriate

				manner.
80.	Association of Financial Mutuals	1.9	We note that the framework for technical provisions will be 'provided later'. It would be helpful if EIOPA could specify how and when it will provide this framework if Level 2 and 3 text is delayed due to no clear decision being made on Omnibus 2 and the LTGA.	The current assumption is that it will be possible to do so in 2014.
81.	CRO Forum and CFO Forum	1.9	<p>As stated in the introduction, there is no framework for the valuation of technical provisions in the interim period and the task of the actuarial function is only relevant for the submission of interim information to the supervisory authority. So we could have expected to have less requirements regarding data quality, testing against experience and even reporting to the AMSB. We are concerned that guidelines in chapter VIII would raise significant expectation from NCAs.</p> <p>Should the requirements for the actuarial function be only related to the submission of information, then the requirements should be reduced to avoid additional overheads for companies. This is particularly important to ensure that entities are not double regulated.</p>	<p>These are preparatory Guidelines. What is required by these preparatory Guidelines has to be complied with from the date of application of the Solvency II Directive.</p> <p>The requirements are not just for the purpose of the submission of information, the fact that undertakings are expected to submit the information only makes it the more important to prepare in a timely manner.</p>
82.	DIMA (Dublin International Insurance & Management)	1.9	The actuarial function will be required to prepare materials for reporting purposes both on the current basis and Solvency II basis. This will impose a heavy workload.	EIOPA acknowledges this.
83.	Financial Reporting Council	1.9	We are unclear how the work of the actuarial function concerning Solvency II technical provisions and capital requirements is to be interpreted in the period up to implementation of Solvency II. We consider that it is most important that the actuarial function monitors and reports on the progress to the administrative, management or supervisory board (AMSB) of the insurer's implementation plans enabling it to be in a	EIOPA regards it as superfluous to put this explicitly as it is already clear and comprehensive enough in the Guidelines for the

			<p>position to determine technical provisions on the Solvency II basis when the Directive comes in to force.</p> <p>We suggest that either Guideline 41 is extended directly or additional supporting explanatory text is provided to reflect a requirement to monitor and report on the plans to implement the requirements set out in Articles 76 to 85 of Solvency II.</p>	Actuarial Function.
85.	Groupe Consultatif Actuariel Européen	1.9	<p>EIOPA and NCAs should not underestimate the difficulty of asking insurers and their actuarial functions to prepare Pillar 1 figures with an incomplete legislative position. Aside from the uncertainties around long-term guarantees, there is the basic problem of having to work from various levels of unofficial Level 2 and 3 texts with inconsistencies between those and the Tech Specs, workbooks and helper tabs provided by EIOPA in March 2013.</p> <p>As required by EIOPA, our comments concentrate on the guidelines and not on the Explanatory Text. We would like to emphasise however that the Explanatory Text contains various requirements where we have concerns and where the explanations appear inconsistent to the guideline. There is a risk that the explanations reflect future supervisory expectations, so a consultation should either reflect these or they should entirely be deleted.</p>	<p>EIOPA and the NCAs are aware of the difficulties. However, there is no alternative. That the final requirements were known relatively late is no excuse for not fully complying with the new requirements from the start. And to ensure proper preparation some testing beforehand has to take place.</p> <p>Noted.</p>
86.	Insurance Europe	1.9	<p>As stated in the introduction, there is no framework for the valuation of technical provisions in the interim period and the task of the actuarial function is only relevant for the submission of interim information to the</p>	<p>It is not correct that the task of the actuarial function is only relevant</p>

			<p>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.</p>	<p>for the submission of interim information. Undertakings have to ensure that they comply with the requirements on technical provisions from day 1 of Solvency II. This requires preparation for which the actuarial function will provide necessary input.</p> <p>The AMSB definitely should be interested in this information, even if it were only for the purpose of the submission of interim information. NCAs will and should have the expectation of full compliance with Solvency II requirements and undertakings should not underestimate the work required to ensure this full compliance or think they still have time after the start of Solvency II to make the necessary improvements.</p>
87.	MGM Advantage	1.9	<p>We note that the framework for technical provisions will be « provided later ». It would be helpful if EIOPA could specify how and when it will provide this framework if Level 2 and 3 text is delayed due to no clear</p>	<p>Please refer to the resolution to comment 80.</p>

			decision being made on Omnibus 2 and the LTGA.	
88.	Aon Ltd	1.10	(REMOVE)	
89.	Association of Financial Mutuals	1.10	We welcome the emphasis on proportionality but remain concerned whether NCAs will fully adhere to this principle in practice.	The principle of proportionality is inherent to the Solvency II Directive and concerns undertakings as well as NCA's. As regards the application to NCA's, please refer to article 29 of the Solvency II Directive.
90.	Financial Reporting Council	1.10	We agree that the principle of proportionality should be embedded within the Guidelines and that this is generally achieved by ensuring that the guidelines are either principles-based or outcomes-focused. However, we are concerned that some of the explanatory text supporting the Guidelines may have an unintended consequence of requiring disproportionate work to be carried out and reported on. For example the guidance on what the actuarial opinions on underwriting policy and the adequacy of reinsurance arrangements might include, taken together with material in the draft level 2 regulations, is very prescriptive.	Noted. The Explanatory Text is outside the scope of the consultation. However, EIOPA has always carefully considered what supervisory expectations for meeting the requirements are reasonable in view of the intention behind the Level 1 Text.
91.	Insurance Europe	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.	EIOPA stresses the fact that the expectation is based on Solvency II requirements.
92.	Lloyd's	1.10	Paragraph 4.3 of the Cover note sets out the «phasing-in » approach,	

			<p>which, according to paragraph 4.6, NCAs are expected to apply in a general manner to assessment of systems of governance.</p> <p>Consequently, as well as the reference in this paragraph to the principles of proportionality, the Introduction should refer to the application of phasing-in to systems of governance, to ensure that these Guidelines are fully in unison with the Cover note. The Cover note's statement that « NCAs and undertakings are expected to progress in their preparedness for Solvency II over time during the course of the preparatory phase » should be repeated.</p>	The Guidelines apply to NCAs which do not require this clarification.
93.				
94.	MGM Advantage	1.10	We welcome the emphasis on proportionality but remain concerned whether NCAs will fully adhere to this principle in practice.	Noted.
95.	ASSOCIATION OF BERMUDA INSURERS AND REINSURERS (ABIR)	1.11	ABIR suggests to at least clarify that, for the purposes of these Guidelines only, insurance and reinsurance groups are allowed to comply with third country group governance requirements where the parent undertaking has its head office in a third country that has undergone a detailed assessment by EIOPA for equivalence. If groups apply third country group governance requirements, the national competent authorities should not apply the Guidelines at the level of the group, nor the group specific Guidelines.	Please refer to resolution of comment 38.
98.	ROAM- Réunion des Organismes d'assurance mutuell	1.11	<p>D'une manière générale, pour la consultation il existe une difficulté d'interprétation sur l'application des guidelines « système de gouvernance » au niveau solo, groupe et particulièrement en France au niveau des SGAM. Les SGAM sont des sociétés de groupe d'assurance mutuelles régies par le code des assurances à L322-1-3. Elles permettent de constituer des groupes de sociétés sans capital social.</p> <p>L'incompréhension se situe dans l'articulation entre l'entité chargée de satisfaire aux exigences de gouvernance pour l'ensemble du groupe, et, l'obligation pour chaque entité de mettre en place ses dispositifs de gouvernance (fonctions clés, gestion des risques et contrôle interne, fit & proper, etc.). Où sont les responsabilités ? L'entité centrale dispose-t-elle de l'autorité suffisante vis-à-vis des entités du groupe (cf. SGAM) ?</p>	Noted, if the SGAM is considered to be a group according to Solvency II, it has to comply with the governance requirements that derive from the Directive.
99.	ACA	1.12	The current drafting guidelines do not recognize the interim period as a	The end-stage is part of

			<p>preparatory phase. The objective for the companies is to progress in the preparation for Solvency II during the preparatory phase but the guidelines are more written in an end-state language ("NCA's should ensure that..."). The guidelines should make it clear that the intention is evolving preparation for Solvency-II. "Should ensure" could be replaced by "NCA's should establish requirements for undertakings to take reparatory steps..."</p>	<p>the preparation period. It is definitely not enough to make progress, at the end of 2015 stands full compliance. Incidentally, making progress means introducing the necessary measures step-by-step. It is not sufficient to prepare "in theory" without actually putting any changes into force yet.</p>
100.	Association of Financial Mutuals	1.12	<p>It is difficult to reconcile the statement that the guidelines will apply from 1/1/2014 with the later text implying that firms should prepare for Solvency II by developing their systems to comply with the guidelines over 2014. We would suggest that the 1/1/2014 date could imply that all of the corporate governance issues need to be in place by 1/1/2014 which would shorten the preparation period considerably. Can we suggest that the paragraph is changed to read: 'The National Competent Authorities should apply the guidelines progressively through 2014 and aim for full compliance by 31/12/2014. It is also important to ensure the Guidelines to no inadvertently result in insurers being forced to comply with Solvency II before it is formally adopted. We believe a clear glidepath is required, over a period longer than 2014.</p>	<p>The intention is that undertakings start closing the gap between current national requirements and the Guidelines from 1 January 2014 with the aim of full compliance by 1 January 2016. Applying the Guidelines progressively means that implementation actually takes place and preparation is not only "in theory".</p>
101.	Institut des Actuares	1.12	<p>Same remark as for 1.6. It is not clear at what date undertakings will have to comply .Suggestion : add at the end « So that undertakings comply by January 1st, 2016</p>	<p>Please refer to the resolution to comment 60.</p>
102.	Insurance and Reinsurance	1.12	<p>A point of general relevance is that taken in isolation this guideline may read over-prescriptively. Our understanding is that guidelines generally</p>	<p>EIOPA does not see this danger. Guidelines</p>

	Stakeholder Group (IRSG)		apply to NCA's only on a 'comply or explain' basis.	should not be read in isolation.
103.	MGM Advantage	1.12	It is difficult to reconcile the statement that the guidelines will apply from 1/1/2014 with the later text implying that firms should prepare for Solvency II by developing their systems to comply with the guidelines over 2014. We would suggest that the 1/1/2014 date could imply that all of the corporate governance issues need to be in place by 1/1/2014 which would shorten the preparation period considerably. It is important to ensure that the Guidelines do not inadvertently result in forcing insurers to have to comply with Solvency II before it is formally adopted. A glidepath is needed, over a longer period than 2014.	Please refer to the resolution to comment 100.
104.	Aon Ltd	Section I. General Comments	It is not clear whether organisations are required to prepare for compliance with the interim measures or comply with the interim measures from 1 January 2014. Please provide clarity on what is reasonable preparation?	Please refer to the resolution to comment 100.
105.	CRO Forum and CFO Forum	1.13	As noted in the general remarks section, the guidelines raise the key concern that the current drafting does not recognise this interim period as a preparatory phase. Furthermore, should we consider the period between 1/01/2014 to 1/01/2016 as a period to become progressively compliant to these measures or should we be already compliant the 01/01/2014?	EIOPA disagrees. Guideline 1 states that NCAs ensure that undertakings take the appropriate steps - which clearly does not mean that full compliance is already required as of 1 January 2014. It is the former.
106.	Groupe Consultatif Actuariel Européen	1.13	Same remark as for 1.7.	Please refer to the resolution for comment 68.
107.	Institut des Actuaire	1.13	Same remark as for 1.6. It is not clear at what date undertakings will have to comply .Suggestion : add at the end «	Please refer to the resolution for comment

			So that undertakings comply by January 1st, 2016	60.
108.	Insurance Europe	1.13	<p>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".</p> <p>See our general comments on the need to focus on the preparedness of undertakings and to apply the guidelines on a best effort basis.</p>	The principle of proportionality is inherent to the Solvency II Directive therefore to these Preparatory Guidelines as well. It is unnecessary to include such a statement on every instance.
109.	Investment & Life Assurance Group Limited (ILAG)	1.13	This is not achievable by 1 January 2014. The results will be published in October 2013 and the Prudential Regulation Authority will need to consult further in the UK.	This is a matter for the PRA to determine.
110.	MGM Advantage	1.13	The timescale is ambitious and is unlikely to be achievable by 1 January 2014. The results of the consultation will be published in October 2013 and the Prudential Regulation Authority will need to consult further in the UK.	Please refer to the resolution to comment 109.
111.	Munich Re	1.13	Please refer to General Comments No. 2 and 3.	
112.	Association of Financial Mutuals	1.14	The use of the word « continuous » is potentially ambiguous and would result in unrealistic and excessively onerous requirements if taken literally.	This is a literal quotation from article 44 (1) of the Solvency II Directive.
113.	Danish Insurance Association (DIA)	1.14	The fit and proper requirement for a person with the overall responsibility for the outsourced key function must be proportionate to the volume of the outsourced function, as this requirement does not make sense for smaller companies or companies that only uses outsourcing to a small extend. In these cases it must be sufficient, that the management can assure that the outsourcing of key functions meets the fit and proper requirement to the extend that the undertaking has set up fit and proper requirements that the outsourcing company shall meet.	EIOPA does not agree. Even smaller undertakings that outsource a key function need to have a person that is responsible for that key function, meaning overseeing that key

				function. Please notice that the fit requirement on the person with oversight of an outsourced function is different from fit requirement on the person who is responsible for the key function where the undertaking performs the key function itself.
114.	DIMA (Dublin International Insurance & Management)	1.14	National authorities cannot ensure a group takes the appropriate steps referred to when it does not have jurisdiction over the "group".	Please refer to the resolution to comment 38.
116.	General Insurance Corporation of India	1.14	<p>The paragraph states ""National competent authorities should ensure that insurance and reinsurance undertakings and groups take the appropriate steps to ..."". Whilst the application of these guidelines will be clear for most entities it is not clear how they would apply to third country branches of non EEA Re-insurers.</p> <p>As a UK branch of an Indian insurance company, General Insurance Corporation of India ("GIC") would welcome clarity on how the guidelines (and the wider Solvency II Directive) are expected to apply to third country branches. To date we still have no clarity on how Article 174 applies and TCBs have received conflicting messages from the regulator.</p> <p>GIC is a large, international reinsurer wholly owned by the Government of India and regulated by the Insurance Regulatory & Development Authority (IRDA), the Indian insurance regulator. IRDA is a member of the IAIS. The global premium income of the Company for the year ending 31st</p>	Agreed, the concerned Guidelines do not apply to third country branches and to non-EEA reinsurance undertakings in the preparatory phase.

			<p>March 2013 was £1.76 billion, and its assets are approximately valued at £ 7.43 billion. GIC UK Branch is however a small EU based establishment, accounting for around 2.6% of the global premium income of GIC</p> <p>To apply full SII requirements (and the guidelines) to the level of GIC would, in our opinion, be disproportionate and we would welcome clarity on this matter.</p> <p>We recommend the guidelines (and the full SII requirements when implemented) should apply at the level of the EEA branch only. The guidelines (and the full SII requirements when implemented) should not apply in full to the entire entity. It is our opinion that only the qualitative aspects of Pillar II should apply to the entire entity (systems & controls governance, internal audit, actuarial function, compliance function, fit & proper requirements etc.).</p>	
117.	International Underwriting Association of London (IUA)	1.14	It appears to us that NACs will not have jurisdiction over the group.	The addressees of the guidelines are the NCAs. That will mean that, in order to comply, Member States may have to adapt the national law.
119.	MGM Advantage	1.14	The use of the word « continuous » is potentially ambiguous and would result in unrealistic and excessively onerous requirements if taken literally.	This is a requirement set out in Article 44 of the Solvency II Directive.
121.	AMICE	1.15	The guideline states that a progress report on the implementation of these guidelines should be submitted to EIOPA by each national authority. We would like that the report is made public in order to facilitate the supervision of the extent these guidelines have been applied in the different Member States.	According to article 16 (3), third paragraph of the EIOPA Regulation EIOPA will publish the NCA's (non) compliance with the preparatory

				Guidelines.
122.	German Insurance Association (GDV)	1.15	Also, as mentioned above, the EIOPA Regulation does not require such a report.	Please refer to the resolution to comment 69.
123.	Insurance Europe	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.	It is embedded in preparation that to some extent in meeting the requirements progress is made sooner rather than later.
124.	Nordea Life & Pensions	1.15	If the first progress report should be delivered by 28 February 2015 it's probably too late to make any adjustments. If the result is not acceptable the deadline for the report should be earlier.	This is for EIOPA to determine.
125.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.15	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.	Please refer to the resolution for comment 33.
126.	ROAM-Réunion des Organismes d'assurance mutuell	1.15	La guideline 2 prévoit un rapport de suivi d'application des guidelines par chaque autorité nationale à l'EIOPA. Nous souhaiterions que ce rapport soit public pour faciliter le suivi du niveau d'application des règles pour chaque pays membre de l'UE.	The part of the progress report that updates the comply-or-explain answers of Member States will be published.
128.	DIMA (Dublin International Insurance & Management	Chapter I General Comments	It should be noted that in the case of groups, undertakings are managed by parent entities including, inter alia, group non-executive directors on their boards. This provides oversight and parental involvement in decision-making at entity level.	Noted.
129.	German Insurance	Chapter I General	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	EIOPA considers to have ensured this. No

	Association (GDV)	Comments	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.	organisational units or functions (other than the key functions) are being identified. The preparatory Guidelines do not go beyond the requirements of article 41 of the Solvency II Directive and just detail the supervisory expectations.
130.	Insurance Europe	Chapter I General Comments	<p>The timetable established by EIOPA for the return of information should take into account the legal time required for the transposition of texts.</p> <p>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.</p>	<p>EIOPA does not understand the comment as there is no timetable.</p> <p>The Guidelines do not mention any specific functions other than the key functions required by the Solvency II Directive.</p>
132.	CRO Forum and CFO Forum	1.16	In applying this requirement, the regulator should be mindful that the challenge can happen outside committees (ASMB) through regular interactions between members of the committees and the undertaking senior management. Requiring the challenge to happen within committees could reduce the effectiveness of these regular interactions. Therefore, we would suggest changing "challenge" to "review" and eventually add a statement to "ensure that the information was adequately challenged before or during the committee".	The interaction with committees or between committees, senior management or other key functions does not exclude the obligation of challenge by the AMSB itself. EIOPA considers this to be an integral part of an effective system of governance.
134.	German	1.16	Furthermore, besides the AMSB being typically involved in any action it	Not only committees

	Insurance Association (GDV)		<p>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”.</p> <p>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.</p>	<p>required by the Solvency II Directive (e.g. remuneration committee) but any committee the AMSB deems necessary to set up.</p> <p>Disagree with the last sentence of the first paragraph. Supervision in theory extends to any normal business activity.</p> <p>EIOPA has checked this again.</p>
135.	Institut des Actuaire	1.16	We don't see how the NCA can check the work of the AMSB about requesting information. AMSB should ensure that governance rules are applied.	The AMSB has to be able to demonstrate that the information request has taken place. This implies that some sort of documentation about the information request is necessary.
136.	Insurance Europe	1.16	This guideline exceeds the requirements included in Article 41(1) of the Directive.	The purpose of the Guidelines is to specify Level 1 requirements but not to add new requirements. However, this specifying does not imply that the Guidelines go “beyond”

			<p>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 whether undertakings are expected to comply with Level 1 as well as these Guidelines in the interim period.</p> <p>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”.</p> <p>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.</p>	<p>the text of Level 1.</p> <p>The Guideline is about appropriate interaction but the implication is there as well.</p> <p>Please refer to “Status of the Solvency II Directive and the Delegated Acts” of the Feedback Statement.</p> <p>No, it means any committee the AMSB establishes for whatever reasons. There is no such thing as “normal” unsupervised business activity.</p> <p>Please see the resolution to comment 135.</p>
137.	International Underwriting Association of London (IUA)	1.16	<p>Given the board structure of UK companies, it would be desirable for it be possible to identify the AMSB as the body that exercises everyday control over the enterprise.</p>	<p>The AMSB according to the Directive covers both one-tier board structures as well as two-tier board structures. As the Guidelines have to be applicable to all NCAs</p>

				they cannot address specific national issues.
139.	Lloyd's	1.16	<p>Guideline 3 sets out preparatory requirements for an undertaking's administrative, management or supervisory body (AMSB). However, it does not refer to Directive Article 40, which requires the AMSB to have ultimate responsibility for compliance with laws, regulations and administrative provisions adopted pursuant to the Directive (presumably including these Guidelines).</p> <p>This raises the question: in the interim period, are NCAs required to ensure that AMSB's have such responsibility? This would provide an appropriate context for the Guideline's existing text, such as the reference to « appropriate interaction with any committee it establishes ».</p>	No, Article 40 is addressed to Member States not NCAs. It is however likely that the requirement is already in place in (most) Member States anyway.
141.	NFU - Nordic Financial Unions	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>	This is corporate law and outside the scope of Solvency II.
142.	ROAM- Réunion des Organismes d'assurance mutuell	1.16	<p>Le superviseur national doit s'assurer des relations entre le Conseil d'administration, les dirigeants et les fonctions clés. La question qui se pose est la mise en œuvre concrète de ces nouvelles obligations pour le superviseur national, dans l'esprit des travaux en cours de transposition en droit français de la notion d'AMSB (GT 5 Trésor – cf supra « General Comment »).</p>	Noted.
144.	Aon Ltd	1.17	<p>This section refers to « all » entities within the Group. This does not take into account the materiality of the entity and whether or not they are</p>	In determining what level of interaction is

			subject to Solvency II As such, this requirement may be unfeasible and create an unnecessary burden for a parent entity. Given this, should the materiality of the subsidiary be taken into account?	appropriate, materiality could be an element.
145.	CRO Forum and CFO Forum	1.17	In applying this requirement, the regulator should be mindful that the challenge can happen outside committees (ASMB) through regular interactions between members of the committees and the undertaking senior management. Requiring the challenge to happen within committees could reduce the effectiveness of these regular interactions. Therefore, we would suggest to change "challenge" by "review" and eventually add a statement to "ensure that the information was adequately challenged before or during the committee".	Disagree: it is not relevant to soften the requirements on the AMSB to be consistent with Article 40of the Solvency II Directive.
146.	Deloitte Touche Tohmatsu	1.17	This paragraph suggests a division of roles and responsibilities between local and group AMSBs. It is not clear from this paragraph what the expected division of roles and responsibilities should be which could lead to differences in the application by national competent authorities. We request clarification of the minimum roles and responsibilities of the Group AMSB to enable consistent application of the group supervisory requirements in the interim period. Additionally, we propose rewording the paragraph to the following: "In accordance with Article 246 of Solvency II, national competent authorities should ensure that at group level, the administrative, management or supervisory body of the entity responsible for fulfilling the group governance requirements has regular interaction with the administrative, management or supervisory bodies of all entities within the group. The group administrative, management and supervisory body should request relevant information proactively in matters that may affect the group and challenge strategic decisions made entity level."	The minimum roles and responsibilities of the AMSB are set out further on in the Guidelines. The Guideline was reworded, taking into account the comment.
147.	DIMA (Dublin Insurance & Management	1.17	The wording here is unclear; local entities may need to communicate local issues to the group AMSB, which would not be aware of the need to request information "proactively". Presumably the "entity responsible for fulfilling the governance requirements" at the level of the group is a regulated entity rather than an unregulated holding group.	The Guideline does not prevent the subsidiary from informing the group AMSB on its own initiative. Noted.
149.	FEE	1.17	It appears that there is the overlap between Paragraphs 1.17 and 1.20	Disagree; 1.17 is about

				decision and 1.20 about structure.
150.	French Federation of Insurance Companies (FFSA)	1.17	In addition to insurance Europe comments, 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).	Please refer to resolution to comment 144. Noted: please also refer to resolution to comment 146.
151.	German Insurance Association (GDV)	1.17	As referred in 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. Also refers to principles on segregation of responsibilities, documentation and further requirements established under article 41 (1), being not clear if undertakings are expected or not to also comply with those requirements.	Noted.(ET)
152.	Groupe Consultatif Actuariel Européen	1.17	It is not clear from the guidelines what is meant by the Administrative Management Supervisory Body (AMSB) challenging the decision making both at group and entity level. There is a suggestion of challenge on decisions already made. If it is envisaged that the entity's governance documents should set out how group should be involved in certain decisions then the text should be reworded. Otherwise the text in paragraph 1.16 may be more appropriate – requesting information and challenging that information. 'Requesting information proactively in the matters that may affect the group '- There may be local matters which local entities will need to communicate to the group AMSB. The group AMSB may not be fully aware of changes to the local business environment effecting local entities. In these cases the AMSB may be unaware of the full information which needs to be requested from local entities. Where does this responsibility lie?	The Guideline has been reworded to add clarity. Please refer to resolution to comment 147.

153.	Institut des Actuaire	1.17	We don't see how the NCA can check the work of the AMSB about requesting information. AMSB should ensure that governance rules are applied.	Documentation of the decision is necessary to prove the compliance with the Guideline. Noted.
154.	Insurance Europe	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>	<p>Please refer to the resolution to comment 117.</p> <p>Disagree. Committees can only provide preparation work for the AMSB. Ultimately the decisions are taken by the AMSB.</p> <p>Please refer to the resolution to comment 150.</p> <p>Noted (ET)</p>
155.	International Underwriting Association of London (IUA)	1.17	We suggest that the entity responsible for fulfilling governance requirements must be a regulated undertaking.	Noted.
157.	NFU - Nordic Financial	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	Noted.

	Unions		the undertaking's ability to build qualitative information and thereby improve the national competent authorities potential to « challenging the decision making both at group and entity level. », as the Guideline says.	
159.	ASSURALIA	1.18	The aim of this guideline should not be to impose the undertakings to set up too many codes of conducts or to have structures that are too complex.	This is not the aim of the Guideline.
160.	Deloitte Touche Tohmatsu	1.18	<p>This paragraph differs from our understanding of Article 41 and introduces additional alignments that make the requirements more complicated. We suggest reverting to the Level 1 suggestion of clear and transparent organisational structures and move away from requiring assessment of support of the strategic objectives and operations.</p> <p>We propose aligning the interim guidelines to the requirements of the Directive. We propose the following rewording of the paragraph: "In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking has a clear and transparent organisational structure with an appropriate allocation and segregation of responsibilities. These structures should be reviewed and adapted when there is a significant change to internal and/or external environment."</p>	Disagree. The proposed redrafting would be repetitive of the Level 1 text whereas the text of the Guidelines adds information on the expectations of NCAs.
161.	Financial Reporting Council	1.18	We agree that EIOPA's proposed guidelines describing the general governance requirements of insurers are sensible and are consistent with those already required by the PRA Handbook. One indicator of appropriate systems and controls is being able to demonstrate compliance with a corporate governance code such as that published by the FRC.	Noted.
162.	German Insurance Association (GDV)	1.18	The explanatory text mentions in its paragraph 1.10 that a separation of functions need 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.	Noted.
163.	Groupe Consultatif Actuariel Européen	1.18	The reference to effective communication, as described in Guideline 3, could be added.	The effective communication is already covered in Article 41. EIOPA does not feel the need to

				expand on this.
164.	Insurance Europe	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>	<p>Noted.</p> <p>EIOPA does not see how such an intention could be read into the Guideline.</p>
166.	NFU - Nordic Financial Unions	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</p>	<p>Noted.</p> <p>Noted. EIOPA cannot take into account the comment as it is outside the scope of Solvency II.</p> <p>Noted.</p>

			<p>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.</p> <p>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>	Noted.
167.	Polish Chamber of Insurance	1.18	The industry would welcome specific guidelines how the operational independency is achieved in practice. E.g. if it is required to have the key functions separated for some size of the company or it would be up to the undertaking to set the organizational structure and separate respective responsibilities.	Operational independence is mostly about the separation from operational activities. The Level 2 text is expected to address the issue you raise in the example.
169.	Deloitte Touche Tohmatsu	1.19	<p>This paragraph suggests that there are regular evaluations of the group structure against the soundness of the group. However, soundness has not been defined. Is this a quantitative or qualitative measure? We request clarification on the definition of soundness to ensure consistent application by national competent authorities.</p> <p>We also propose rewording the paragraph to the following: "In accordance with Article 246 of Solvency II, national competent authorities should ensure that the administrative, management or supervisory body of the entity responsible for fulfilling the governance requirements at group level have responsibility for evaluating the group's structure to identify any</p>	Agree: the word soundness has been replaced by "sustainable financial position".

			significant risks to group or entity soundness and for making the necessary adjustments in a timely manner.”	
170.	FEE	1.19	We propose to change the wording in line 3 of this paragraph to the following “changes to the group’s structure affect the undertaking’s ability to fulfil that role and makes...”.	Please refer to the resolution to comment 169.
171.	German Insurance Association (GDV)	1.19	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.	Noted (ET)
172.	Institut des Actuaire	1.19	We don’t see how the NCA can check the work of the AMSB about requesting information. Group AMSB should ensure that governance rules are applied.	Please refer to the resolution to comment 153.
173.	Insurance Europe	1.19	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.	Noted (ET).
176.	Aon Ltd	1.20	The wording in this section is too broad; it currently refers to parent undertakings « know »[ing] the business and risks of all undertakings within the Group. As currently prescribed this clause imposes an unrealistic expectation on the AMSB as it does not refer to material risks and activities. Further clarity on the interpretation of « knows » and materiality criteria would be helpful.	Agree: the Guideline has been reworded.
177.	FEE	1.20	Please refer to our comment in paragraph 1.17.	Noted.
179.	Institut des Actuaire	1.20	We don’t see how the NCA can check the work of the AMSB about requesting information. Group AMSB should ensure that governance rules are applied.	Please refer to resolution of comment 153.
180.	Insurance Europe	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..	The word “purpose” has been replaced by “business model”.
182.	ROAM-	1.20	Idem cf 1-11. Plus spécifiquement, pour le marché français, quelle est	Noted.

	Réunion des Organismes d'assurance mutuell		l'entité dans une SGAM qui doit satisfaire aux exigences de gouvernance pour l'ensemble du groupe?	
184.	AMICE	1.21	Guideline 5 – Key functions We support the approach taken by EIOPA as to the roles of the actuarial function with regards the risk management function.	Noted.
185.	Deloitte Touche Tohmatsu	1.21	This paragraph suggests that the compliance function should be appropriately implemented during the interim period; however there is no further information on what this means set out in this CP. We propose the addition of guidelines setting out the expectations for the compliance function in the interim period.	This should be clear from the Directive. EIOPA does not consider it necessary to specify the requirements set out there.
186.	ECIROA	1.21	Small, medium size re-/insurers and captives should be allowed to assign more than one key function (other than internal audit) to one individual based on the Principle of Proportionality	Noted.
187.	Financial Reporting Council	1.21	We welcome the proposal to establish an actuarial function in preparing for Solvency II as we consider that actuarial information is helpful to the AMSB of an insurer in making decisions concerning technical provisions, underwriting policy and reinsurance arrangements. While article 48 does not require the work of the actuarial function to be carried out by a member of the professional actuarial body, it does require that the role is carried out by persons who have appropriate knowledge of actuarial and financial mathematics and who are able to demonstrate relevant experience with applicable professional and other standards. An individual taking on the actuarial function, either in whole or in part, will be required to demonstrate to the Board that they are fit to perform the role. One indicator of fitness might be to be a member of a professional actuarial body and possessing a relevant practising certificate issued by that body endorsing the required experience.	Noted. Noted.

			In the UK, the FRC in its independent oversight role of the Institute and Faculty of Actuaries (IFoA) regulatory activity oversees the IfoA's practising certificate regime established for actuaries carrying out the actuarial function role in UK life insurers and for syndicate actuaries in Lloyd's. EIOPA might find this regime a useful precedent capable of extension to actuarial function work in both life and general insurers.	Noted.
188.	French Federation of Insurance Companies (FFSA)	1.21	In addition to Insurance Europe Comments, 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.	Noted, however this is not relevant here.
189.	German Insurance Association (GDV)	1.21	Guideline 5 should consider the principle of proportionality. Less complex undertakings may, accordingly with draft Level 2 and except to respect to the internal audit function, allow a single person or organizational unit to carry out more than one function. Should also be possible the holding of a key function by a member of the ASMB. Also outsourcing should be foreseen in line with article 49 of Directive 2009/138/EC.	Noted. EIOPA would not prescribe in this area as undertakings are supposed to organise themselves according to their circumstances and in order that they can meet the Guidelines in general, e.g. that any conflicts of interest are appropriately dealt with. Noted.
190.	Groupe Consultatif Actuariel Européen	1.21	It will be challenging (for actuaries, not least, especially for the risk management and actuarial functions) to implement effectively while dependent on some texts in draft form (for example the Level 3 drafts on AF and AF report)	Noted.
191.	Insurance and Reinsurance	1.21	In the spirit of proportionality, small and medium size insurance undertakings should be allowed to allocate more than one key function	Noted. This is expected to be covered by the

	Stakeholder Group (IRSG)		(other than internal audit) to an individual.	Implementing Measures.
192.	Insurance Association of Cyprus	1.21	The draft Level 2 measures as well as the explanatory text entitle small and less complex undertakings to assign more than one key functions to one person or unit (except in the case of internal audit). We believe that this entitlement should be included in the text of the Guidelines.	Noted. Repetition of the Level 2 text is against the convention for Guidelines.
193.	Insurance Europe	1.21	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. Outsourcing should be foreseen in line with article 49 of Directive 2009/138/EC. 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.	Noted. Noted. Please refer to the resolution to comment 188.
195.	Polish Chamber of Insurance	1.21	Compliance function is mentioned only in G5. Is it on purpose that there is no further guideline regarding compliance function? We would welcome some specific guidelines on this key function. It would be extremely important to have confirmed by the guidelines if the Actuarial Key Function belongs to 1st or 2nd line of defence. Based on this it would be possible to understand precisely the responsibility of the Actuarial Function in respect of e.g. reserving calculations.	Please refer to the resolution to "Compliance Function" of the Feedback Statement. The Solvency II Directive does not use the lines of defence concept. Essentially, the Actuarial Function is a control function. But the Directive is open as to whether undertakings

				might decide to let the Actuarial Function perform activities regarding the calculation of the technical provisions. When doing so potential conflicts of interest need to be addressed.
196.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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</p>	<p>The Solvency II Directive includes already a quite detailed list of risks that are covered by the risk management system, for which the risk management function is responsible, and also of the tasks of the actuarial function. EIOPA does not consider it appropriate to go beyond these detailed lists, thereby limiting the unnecessary the freedom of undertakings to organise themselves as they see fit.</p> <p>Noted: it is not the purpose of the Guideline to prescribe a specific organisation and give more prescriptions; please see in addition comment 32.</p>

			function, compliance function, internal audit function and actuarial 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?	Please refer to "Compliance Function" in the Feedback Statement.
197.	ROAM- Réunion des Organismes d'assurance mutuell	1.21	(cf. 1.22)	Please refer to the resolution to comments 196 and 98.
199.	AMICE	1.22	<p>Further guidance is needed on how the key functions and / or group level are organized in horizontal groups; More specifically, how should the key functions at solo level and those at group level should be articulated?</p> <p>Reference to article 246 on the supervision of the system of governance should also be made.</p>	Please refer to resolution of comment 98.
200.	Deloitte Touche Tohmatsu	1.22	<p>This paragraph suggests that there is flexibility in how the required functions are implemented at group level. If there are minimum requirements and rules for delegation, we suggest that these are made clear in this paragraph to ensure common implementation across all jurisdictions.</p> <p>Additionally, this paragraph suggests that the compliance function should be appropriately implemented during the interim period; however there is no further information on what this means set out later in the paper. We propose the addition of guidelines setting out the expectations for the compliance function in the interim period.</p>	<p>Please refer to resolution of comment 196.</p> <p>Please refer to "Compliance function" in the Feedback Statement.</p>

201.	Groupe Consultatif Actuariel Européen	1.22	Same comment as 1.21 applies to group and subsidiaries situations	Noted.
202.	Insurance Europe	1.22	It is unclear what would be the interaction and concrete tasks of some functions required at Group level (e.g. actuarial function).	Please refer to the resolution to comment 196.
204.	Nordea Life & Pensions	1.22	Implementing all Key functions should only be required if the entity responsible for fulfilling the governance requirements is an Insurance company. If the entity is an Insurance holding company, the responsibility as the owner of will be possible to accomplish without all the key functions. Especially an actuarial function will be difficult to establish, because each subsidiary will be responsible for the actuarial issues.	There is a requirement at the level of the individual entity as well at the level of the group. Please also refer to the resolution to comment 32 and 196.
205.	Polish Chamber of Insurance	1.22	See comment to 1.21.	Noted.
206.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.22	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. Additionally it is still not clear how are the interaction and concrete tasks of some functions required at group level (e.g. actuarial function). 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	Please refer to the resolution to comment 196. Please refer to “Compliance function” in

			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?	the Feedback Statement.
207.	ROAM- Réunion des Organismes d'assurance mutuell	1.22	cf Commentaires au 1-11. Plus spécifiquement, pour le marché français, comment s'organisent les fonctions clés au niveau d'une SGAM ou/et groupe de sociétés et des entités affiliées ou filiales. Plus spécifiquement, quelle articulation entre les fonctions clés des sociétés (solo) et celles au niveau du groupe de sociétés ? Parmi les articles de la directive cité, viser également l'article 246.	Please refer to the resolution to comments 196 and 98. Agree.
208.	RSA Insurance Group	1.22	We believe it is appropriate to have key functions at each regulated undertaking level and also at the highest EEA parent undertaking/Group level. It is not appropriate or necessary to have key functions at other holding companies/parent undertakings in the group structure.	Please refer to the resolution to comment 32 and 196.
210.	ACA	1.23	As referred to in Article 41-2 of the Directive the proportionality principle has to be applied. The guideline should be a double signature.	Disagree. This Guideline is to accommodate different corporate governance structures across the European Union. The main thing is that the decision will be challenged and discussed.
211.	AMICE	1.23	Guideline 6 – Decision making This guideline foresees that at least two persons effectively run an undertaking and that any significant decision of the undertaking involves at least two persons who effectively run the undertaking. In our view, it should be up to the undertaking to decide what "significant" means.	Agree.

			<p>It also raises a number of questions such as:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Who are the two persons? <input type="checkbox"/> What should be their level of involvement? <input type="checkbox"/> What will happen in case of disagreement between the two persons who effectively are running the undertaking? <input type="checkbox"/> Does this principle lay in the implementation of a monitoring principle (or is it the aim to avoid a concentration of power)? <p>A system of co-management that impedes the effectiveness of the system of governance should be avoided; This guideline should therefore be adapted to the specificities of the governance system in each Member State as well as to the size and / or internal structure of each entity, particularly in small companies.</p>	<p>It is up to the undertaking to provide for an answer to these questions. EIOPA does not want to interfere in these issues or narrow down possible solutions. Persons who effectively run the undertaking include senior management. The second person has to be able to discuss the decision and to challenge it. What happens in case of disagreement depends on the undertaking's internal procedures for such cases. This is about having the four-eyes-principles on the top level of the undertaking as well.</p> <p>The Guidelines was drafted taking into account the differences in corporate structures in Member States.</p>
212.	Aon Ltd	1.23	<p>Greater clarity is required in the wording of this paragraph, and can be brought in from the guidance. The current description is not proportionate and potentially confuses delegated authority and effective control. We do</p>	<p>Please refer to resolution to comment 210.</p>

			<p>not think it is proportionate to specify that organisations involve 2 separate individuals in the decision process.</p> <p>A fundamental principle of good governance allows for authority to be delegated to a specific individual (e.g. from the Board/ AMSB to the Chief Executive). The delegated individual will be accountable to the source of the authority to validate the decisions that they have taken. Separately, you would expect controls over operations such that no single individual could expose the company to a material risk, (i.e. dual signatures on payments to prevent fraud). Similarly, you would expect monitoring controls over the decisions that are taken to ensure that they have been implemented in accordance with their authority and the policies and procedures of the organisation. (4-eyes principle).</p>	<p>The Guideline is not intended to cover any day to day management decision (or to interfere with delegation of duties and tasks at the level of the AMSB or senior management) .The Guideline is meant to cover, where appropriate, any significant decision at the level of persons effectively running the undertaking.</p> <p>According to the internal control requirements EIOPA would expect the 4-eyes principle also to be applied at any other level within the undertaking.</p>
213.	Association of Financial Mutuels	1.23	<p>We believe that the two person statement here is vague and open to misinterpretation. We would suggest that the statement is revised to require that the administrative, management and supervisory body (or AMSB) has sufficient challenge within its decisions. This means that members of the body must be competent and show independence from the CEO and should number more than one person.</p>	<p>This Guideline is to accommodate different corporate governance structures across the European Union. The guideline is not only applicable to the AMSB as persons who</p>

				effectively run the undertaking include senior management. These persons are required to be fit and proper according to Article 42.
214.	DIMA (Dublin International Insurance & Management)	1.23	The requirement to have at least two persons effectively running the undertaking is incompatible with efficient decision-making processes. Most legal entities will have a CEO who reports to and is responsible to the board of directors of the undertaking. It should be for the board of directors to set the limits of authority of the CEO and any other member of senior management and to provide the necessary checks, balances and controls, rather than having a regulation dictate that two individuals effectively run the company. We understand that this permits delegation to the CEO for matters that aren't "significant decisions" and that for such decisions, the involvement of two persons such as the CEO and a board member, or two board members, is required. It is preferable to ensure that proper checks and balances of authority within an undertaking's governance structure are set and managed by its board of directors.	Please see the resolution to comment 213.
215.	ECIROA	1.23	In the explanatory text EIOPA may clarify that it is not necessary that there be two executives, for example in the case of captive undertakings, one of the parties to decisions may be a non-executive director.	Persons who effectively run the undertaking is not limited to executives, provided the person can be said to be effectively running the undertaking a non-executive director is eligible. See whether we can add this in the ET
217.	German	1.23	We appreciate this clear statement since undertakings effectively run by	Noted.

	Insurance Association (GDV)		two persons are necessary to efficient use of resources especially within groups	
218.	Institut des Actuaire	1.23	<p>1-We suggest to add elements on proportionality</p> <p>2- It's difficult to understand such a principle: If only one or even two persons are involved, it's a matter of confidentiality that could be jeopardized. When an insurer is only a shell, it has only one general manager practically responsible for everything, which is an issue.</p> <p>3- Can an executive committee (which is not 2 people but for instance a legal directory of 3 to 5 people) be seen as fulfilling the 4 eyes principle?</p> <p>4- For shells (insurers without salaried people), the responsibility lies at the Group level.</p>	<p>There is no room for reducing the requirement in the execution.</p> <p>It is about effective internal controls at all levels of the undertaking. Confidentiality does not require that no more than one person knows about something. Practices that are not in line with requirements will have to change.</p> <p>More than two persons can be involved and according to proportionality it may mean that more than two persons have to be involved.</p> <p>The responsibility for running an undertaking never lies outside the undertaking.</p>
219.	Insurance and	1.23	EIOPA might usefully clarify in the explanatory text or otherwise that it is	Please refer to the

	Reinsurance Stakeholder Group (IRSG)		not necessary that there be two executives, for example in the case of captive undertakings, one of the parties to decisions may be a non-executive director.	resolution to comment 215.
220.	Insurance Europe	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>	<p>EIOPA presumes that no change to company law is needed in order to comply with this Guideline.</p> <p>This is a specification of sound and prudent management.</p> <p>Giving explanations or definitions in the Guidelines is against the drafting convention for Guidelines.</p>
221.	International Underwriting Association of London (IUA)	1.23	Normally it would not appear sensible to have two individuals running a company, unless the constitution makes it clear that the chief executive is subject to the authority of a higher authority which is also subject to checks and balances.	Please refer to the Explanatory Text for the explanation of "persons who effectively run the undertaking".
223.	MGM Advantage	1.23	We believe that the two person statement here is vague and open to misinterpretation. We would suggest that the statement is revised to require that the administrative, management and supervisory body (or AMSB) has sufficient challenge within its decisions. This means that members of the body must be competent and show independence from the CEO and should number more than one person.	Please refer to the resolution to comment 213.
224.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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.	Please refer to the resolution to comment 211.
225.	ROAM-	1.23	Cette guideline prévoit qu'au moins deux personnes « dirigeant »	Please refer to the

	Réunion des Organismes d'assurance mutuell		l'entreprise et sont impliquées dans le processus de décisions importantes « significant »: or cette condition n'est pas prévue dans la directive et n'est donc pas en accord avec l'article 41 visée dans la guideline. Quelle est la base légale de cette guideline ? Elle soulève en outre un certain nombre d'interrogations telles que : Qui sont ces deux personnes ? quel niveau d'implication des personnes ? que se passe-t-il en cas de désaccord entre les personnes ? s'agit-il de la mise en place d'un principe de surveillance (voire d'éviter une concentration des pouvoirs) ? Il ne doit en aucun cas s'agir d'un système de co-direction qui entraverait l'efficacité du système de gouvernance. Il conviendrait, au minimum, d'adapter cette règle aux spécificités de gouvernance de chaque droit national (cf. travaux GT 5 en cours) ainsi que de tenir compte de la taille et/ou de l'organisation de chaque entité, tout particulièrement dans les petites structures.	resolution to comment 211.
227.	CRO Forum and CFO Forum	1.24	Guideline 7 states that "national competent authorities should ensure that the undertaking appropriately documents the decisions taken at the level of the administrative, management or supervisory body of the undertaking and how information from the risk management system has been taken into account". We consider that this should apply to "material" decisions only, consistent with the principles of proportionality.	"Appropriately documents" implies proportionality.
228.	Deloitte Touche Tohmatsu	1.24	This paragraph is open to interpretation. In the spirit of minimising inconsistencies in the application of the interim guidelines across jurisdictions we would like to request addition of relevance and materiality as criteria. We propose rewording this paragraph to the following: "In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking appropriately documents material decisions taken at the level of the administrative, management or supervisory body and its committees demonstrating that relevant information from the risk management system has been considered."	Please refer to resolution to comment 227.
229.	German Insurance Association (GDV)	1.24	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.	The risks associated with a decision have to be taken into account.

			This should apply to “material” decisions only, consistently with the principle of proportionality.	Please refer to resolution to comment 227.
230.	Insurance Association of Cyprus	1.24	The requirement to document how information from the risk management system has been taken into account is too abstract and far reaching. We propose redrafting it in more concrete and specific terms.	Please refer to resolution to comment 230.
231.	Insurance Europe	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 proportionality.</p>	<p>EIOPA has corrected the reference. The second part of the requirement follows from Article 44. It is a consequence of sound and prudent management that important decisions - such as the decisions taken by the AMSB - are traceable. The risk management system has to take the information needs of the AMSB into account and the undertaking demonstrates with the documentation that this is the case.</p> <p>Including the word “material” would narrow the requirement down too much. Only minor decisions would not require documentation.</p>

	Lloyd's	1.24	<p>The « risk management system » referred to in this paragraph is a wide-ranging concept. There is no reference in either the Directive or draft Level 2 measures to the need to document how information from this system has been taken into account. We question whether it is appropriate to introduce a novel requirement such as this through preparatory Guidelines and suggest that the last part of this sentence (from « ...and how information from.. ») is deleted.</p> <p>In line with the principle of proportionality, this paragraph should refer to « material decisions ».</p> <p>This paragraph should therefore be e-drafted :</p> <p>« In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking appropriately documents material decisions taken at the level of the administrative, management or supervisory body of the undertaking. »</p>	Please refer to the resolution to comment 231.
233.	ROAM- Réunion des Organismes d'assurance mutuell	1.24	cf Commentaires au 1.16	Please refer to the resolution to comment 142.
235.	Insurance Association of Cyprus	1.25	We do not agree with the requirement to undertake internal reviews of the system of governance during the preparatory period. We consider that this would add up to the companies' burden without bringing any real benefits.	EIOPA disagrees that there are no real benefits. Even without such preparatory Guidelines EIOPA would expect undertaking to regularly review their System of Governance in order for necessary improvements to take place. There is no difference in benefit between the preparatory phase and the time Solvency II is

				applicable.
236.	Insurance Europe	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.	This Guideline further details the supervisory expectations as regards the application of the requirement of the Solvency II Directive.
	Lloyd's	1.25	Guideline 8 requires NCAs to ensure that an AMSB determines the scope and frequency of internal reviews of the system of governance. Although this is said to be « in accordance with Article 41 », it does not say whether NCAs should apply the Article's requirement, that « the system of governance shall be subject to regular internal review », so it is not clear whether this applies to undertakings in the interim period (the Explanatory Text says that this is the case, reinforcing the impression that it is imposing requirements that do not appear in the Guidelines). We suggest that a new paragraph is inserted : «In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking's system of governance is subject to regular internal review ».	Disagree. What is suggested is in fact a repetition of the Solvency II Directive requirement. Guidelines are not supposed to repeat the Directive. The Guideline further specifies the supervisory expectations on how undertakings should comply with the Directive requirement.
238.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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, which will help NCA to ensure that requirements related to system of governance are met?	This is outside the scope of these Guidelines.
240.	Aon Ltd	1.26	Should the interim measures include a requirement for the governance review to be performed by individuals that meet suitable "fit" requirements, similar to the AMSB and Key Functions? As currently phrased there is a risk that the quality of the reviews will be variable.	EIOPA deleted the Guideline. The persons performing the review have of course to be

				competent for this task but they are not required to be within the scope of the fit requirements of Article 42.
241.	FEE	1.26	We question if Paragraph 1.26 is necessary if requirement already so stated in Article 41 of the "Framework Directive".	EIOPA deleted the Guideline.
242.	German Insurance Association (GDV)	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.	This internal review is not the same as the evaluation of the adequacy and effectiveness of the elements of the system of governance that the internal audit function has to perform according to Article 48.
243.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.26	The immediately preceding guideline specifies that NCA's should ensure that the AMSB of the undertaking decide the scope and frequency of governance reviews. It seems likely that this guideline also should apply to the AMSB also.	EIOPA deleted the Guideline.
244.	Insurance Europe	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.	Please refer to the resolution to comment 240.
246.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.26	ECIIA thinks that the wording of the Guideline 8 might cause misunderstandings. Art. 41 rightly demands a regular internal review of the system of governance. This regular monitoring is a permanent task of each of the governance functions itself. In addition ECIIA recommends a self-assessment performed by the board itself on a yearly basis. It is a way to walk through decisions already taken by the board ensuring if they	EIOA deleted the Guideline. This is up to undertakings to decide, the Solvency II Directive does not

			<p>are still valid. This self-assessment should be conducted by a board member or a committee of the board. Furthermore we have the audit activities requested by Art. 47, which are reported to the board. All this activities form part of an internal review as requested in Art. 41. Guideline 8 might give the impression, that an additional review is requested, without saying which additional objective is pursued with it. So we cannot see the added value of it. We propose to be more concrete saying that the regular internal review should, besides the ongoing monitoring activities of the governance functions, comprise a self assessment by the board and is supported by the audit activities in respect of the governance system.</p> <p>Guideline 8 - Internal review of the system of governance</p> <p>1.25 (new) In accordance with Article 41 of Solvency II, national competent authorities should ensure that the regular internal review comprises besides the ongoing monitoring activities of the governance functions a self assessment by the board supported by the results of the internal audit activities in respect of the governance system.</p> <p>1.25 old will be 1.26 new with „self Assessment“ instead of „internal reviews“; 1.26 old can be deleted; 1.27 old „self assessment“ instead of „review“</p>	<p>include such a requirement.</p> <p>An additional review is necessary according to Article 41.</p>
248.	Aon Ltd	1.27	Are the feedback loops between the AMSB and the business or between the reviewers and the AMSB?	Between AMSB and the business.
249.	CRO Forum and CFO Forum	1.27	Proportionality also needs to apply with regard to the level of completeness required for documentation.	Proportionality has nothing to do with the level of completeness of documentation. Having incomplete documentation means the requirement is not fully complied with. Proportionality cannot justify non- or only partial application of requirements. However, if you mean that how

				much documentation is produced will depend on the size of the undertaking whose system of governance is under review, this is correct. There is likely to be more to document if a big organisation is under review.
250.	German Insurance Association (GDV)	1.27	Proportionality also needs to apply with regard to the level of completeness required for documentation..	Please refer to the resolution to comment 249.
251.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.27	This would usefully be expanded to embrace stakeholders: In accordance with Article 41 of Solvency II, national competent authorities should ensure that the scope, findings and conclusions of the review are properly documented and reported to the administrative, management or supervisory body of the undertaking and to specifically interested classes of stakeholder as appropriate. Suitable feedback loops are necessary to ensure follow-up actions are undertaken and recorded.	Disagree, such a requirement would be beyond the scope of the Solvency II Directive. Such a requirement would fall within the remit of corporate governance.
252.	Insurance Europe	1.27	Proportionality also needs to apply with regard to the level of completeness required for documentation.	Please refer to the resolution to comment 249.
255.	ASSURALIA	1.28	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.	The Guideline does not say "any facts" but "any facts relevant to the performance" which already means that not everything has to be reported.

256.	CRO Forum and CFO Forum	1.28	As explained in the introduction, this requirement and the next one are too prescriptive and don't necessarily make the difference between what is a policy (e.g. a principle based document like the Solvency II directive) and a procedure (e.g. technical document like level 3 text).	The Guideline details the supervisory expectations as regards the main components of a policy, and in this sense is principles based. It is not the purpose of the Guideline to prescribe the detailed content of the policy as in the sense of a technical document.
257.	Deloitte Touche Tohmatsu	1.28	This paragraph does not include the scope of policies which this applies to. We request that the scope is made clear.	The Guideline addresses the scope: "all policies required as part of the system of governance".
258.	ECIROA	1.28	Could you confirm that all policies required as part of the system of governance could be consolidated into one global governance document, as long as they address each topic required by the Directive?	EIOPA can confirm this.
260.	German Insurance Association (GDV)	1.28	<p>Guideline 9 does not clearly set the written policies that undertakings are required to have (as required under art 41 (3) of Directive 2009/138/EC). However, in the explanatory text which is not subjected to public consultation, is referred that undertakings need to comply not only with the policies on article 41 (3) but also with the sub-policies in article 44 (2) and the model change policy. We ask EIOPA to enhance clarity on the scope of the Guidelines as the current drafting raises significant ambiguity.</p> <p>We also underline that 1.28 expands significantly on the current Level 1 and Level 2. We consider that the proposed content of the policies is too ambitious as preparatory work for Solvency II, considering that after</p>	<p>Article 41 (3) does not give an exhaustive lists of issues for which a policy needs to be in place ('at least').</p> <p>So this article and the Guideline apply to any policy required by the Solvency II Directive or following the undertaking's strategy.</p> <p>Policies have to be reviewed regularly</p>

			<p>implementation of Solvency II adjustments may necessarily be expected namely on bullets 1.28 b) to d).</p> <p>The explanatory text states in paragraph 1.28 that all staff member should be familiar with the policies. In our view only the affected staff members need to be familiar with these policies.</p> <p>Also paragraph 1.30 of the explanatory text regarding the review of written policies might be too detailed.</p>	<p>anyway.</p> <p>The Explanatory Text is outside the scope of the consultation.</p> <p>Change ET to "relevant staff"</p>
261.	Groupe Consultatif Actuariel Européen	1.28	<p>In order to ensure appropriate coordination among the several functions (especially relevant for actuaries are risk management and actuarial functions) and avoid overlaps /gaps it would be convenient that the interaction among the functions was clearly set in the policies.</p> <p>Is it the correct intention to be as specific as "person" in b)</p>	<p>EIOPA considers this to be covered by a) and b).</p> <p>The Guideline says "person or role" acknowledging that "person" may not always be appropriate.</p>
262.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.28	<p>Comment re explanatory text :</p> <p>Art. 41 para. 3 subsection 2 of the Solvency II framework directive requires that the policies in relation to the risk management, internal control, internal audit and, where relevant, outsourcing need to be annually reviewed. The explanatory text in paragraph 1.29 now expands the review requirement to all policies (including « sub-policies »). This additional review may create an inappropriate additional administrative burden for undertakings and, accordingly, should be reduced to a minimum (e.g. review of sub-policies only where the main policy has been amended or where a review otherwise seems appropriate e.g. due to changes in the system of governance, etc.).</p>	<p>Please refer to resolution to comment 260.</p>
263.	Insurance Association of	1.28	<p>We consider the proposed content of the policies to be too broad and detailed for the purposes of this preparatory stage. We support an</p>	<p>The Guideline only prescribes what</p>

	Cyprus		approach in terms of high level principles that avoids prescribing the requirements in detail.	undertakings need to address as a minimum in every policy. The content of the policy as such is left to the undertakings.
264.	Insurance Europe	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</p>	<p>Please refer to resolutions to comments 256 and 257.</p> <p>Disagree. This is a specification as to what policies in general are about. Undertakings need to have all necessary policies in place at the start of Solvency II. Policies are subject to regular review, so the need for later adjustments is no reason not to establish policies yet.</p> <p>Please see the Explanatory Text.</p> <p>Please refer to resolutions to comment 255</p> <p>Explanatory Text is not subject to consultation.</p>

			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.	
266.	Polish Chamber of Insurance	1.28	The documentation requirements including strategies, policies and procedures for each key function seems to be very extensive.	This is not the content of the Guideline.
267.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.28	<p>In our opinion:</p> <ul style="list-style-type: none"> - Proportionality needs to be applied especially in regard the level of completeness required from documentation. - 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>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 any facts relevant for the performance of their duties. ""</p> <p>In our opinion a detailed guideline/example should be provided what should be understood under "any facts 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>Please refer to the resolution to comment 249.</p> <p>Preparation does not mean full compliance as of 1 January 2014. Policies have to be made compliant step-by-step during the Preparatory phase in order to be fully compliant by 1 January 2016.</p> <p>The model change policy is part of the internal model approval. Consequently, NCAs need to look at that policy during the pre-application process.</p> <p>It is up to the undertaking or the persons who have to inform respectively to decide what is relevant.</p>

			<p>Moreover, the guidelines mention only risk management, internal audit and the compliance and actuarial functions and 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>	<p>Depending on the circumstances, information on a resignation or lay off may be relevant.</p> <p>An internal control function is not distinguished by the Solvency II Directive.</p>
268.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.28	<p>ECIIA agrees that written policies clearly defining the task and responsibilities are crucial for an effective system of governance. Regarding the processes and reporting procedures (point c)) we would like to clarify, that in the policies approved by the AMSB these processes and procedures are defined at a high level, e.g. for Internal Audit the policy should set out, that Internal Audit disposes of processes for the risk based audit plan, the audit, the follow-up and the reporting. The details of each process should be defined in separate process descriptions or manuals, which include also the supporting IT tools.</p> <p>Add "general" in point (c)</p>	<p>Agree.</p> <p>It follows from policies being high-level that the processes should be general.</p>
270.	CRO Forum and CFO Forum	1.29	<p>The explanation regarding the review of written policies might be too detailed, it would be sufficient to confirm that the review has to be appropriately documented. The implementation should be left to the undertaking. In practice it would be very time consuming to record all the suggested recommendations made during the review process.</p>	<p>Noted.</p>
271.	Deloitte Touche Tohmatsu	1.29	<p>This paragraph suggests that the roles and responsibilities of the key functions are dispersed across all of the policies. Our experience is that this is helpful to have within the policies, but does not provide clarity on</p>	<p>Disagree. The necessary information should not be dispersed; a policy is</p>

			<p>the overall roles and responsibilities of the function. Our experience suggests that this can be documented in different ways outside of the policies and be equally effective.</p> <p>We propose rewording the paragraph as follows: "In accordance with Article 41 of Solvency II, national competent authorities should ensure that the roles, responsibilities, rights and powers of the key functions are clearly documented."</p>	in place to comprise the necessary information.
272.	Insurance Europe	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, if developed, that cover the key functions?	There should be policies that cover the key functions but paragraph 1.29 only applies to these.
275.	ASSURALIA	1.30	According to the explanatory text, it is not necessary to have contingency plans for every activity of the undertaking. The examples given in the explanatory text show that contingency plans are needed for operational risks. It is suggested to refer explicitly in the guideline to operational risks.	EIOPA does not consider reference to operational risk necessary.
276.	ECIROA	1.30	Where the management of the undertaking is outsourced, it can also outsource contingency planning to its service provider provided it checks and approves the plan. For captives and smaller undertakings a proportionate approach to contingency planning must be accepted.	Disagree. It is the responsibility of the undertaking to develop and maintain a contingency plan. As part of an outsourcing agreement one may expect the undertaking to require the service provider to develop a contingency plan as well.
277.	Groupe Consultatif Actuariel Européen	1.30	With reference to the wording 'where it considers itself to be especially vulnerable' - contingency plans should not be solely limited to areas where the undertaking considers itself to be 'especially vulnerable', but rather a risk-based pragmatic approach should be adopted.	The statement 'where it considers itself to be especially vulnerable' does not exclude a risk based approach. EIOPA

				agrees that contingency planning should be risk based. But EIOPA changed the Guideline to clarify this issue.
278.	Insurance Europe	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.	Please refer to resolution to comment 275.
280.	MGM Advantage	1.30	The general point around proportionality should be included within this paragraph since the scope of a « contingency plan » can vary enormously.	Proportionality is inherent to the Directive, the draft Implementing Measures and EIOPA Guidelines and needs not to be referred to explicitly on every occasion.
281.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.30	In our opinion: - Proportionality needs to be applied especially in regard the level of completeness required from documentation - 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.	Please refer to resolution to comment 280.
282.	ROAM-Réunion des Organismes d'assurance	1.30	Il est important que l'autorité nationale applique le principe de proportionnalité notamment lors de ses contrôles. Les exigences ne sauraient être les mêmes entre des entités multinationales assurant tous types de risques et une société d'assurance mutuelle, régionale, assurant	Noted.

	mutuell		des risques de particuliers.	
284.	AMICE	Chapter II General Comments	Guideline 11 – Fit requirements	
285.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	Chapter II General Comments	<p>According to guidelines, fit & proper requirements are to be met also during transition period. The question is if and how the NCA will examine that fit & 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>	<p>Persons within the scope of the fit & proper requirements who were appointed before Solvency II is applicable still need to be fit & proper and undertakings have to ensure that this is the case. Whether NCAs also will check this is up to them to decide.</p> <p>How the assessment by the NCAs will be performed is outside the scope of the preparatory Guidelines.</p> <p>Concerning the proper assessment EIOPA acknowledges that there is room for local practices. Please see Guideline 12 last sentence which conveys this message.</p>
286.	AMICE	1.31		Noted and agreed.

			Each individual belonging to a key function or to the AMSB does not necessarily have the same level of skills and expertise as it is highly dependent on their tasks and responsibilities. Training courses also play an important role in improving its qualifications.	Proportionality applies.
287.	ECIROA	1.31	Given the large variety of experiences, qualifications, and in the end profiles which could attest a sufficient level of knowledge in the required fields as well as the width of the fields themselves , proofs of knowledge to be provided to the regulator should not be limited in type or format (CV, training certification, interventions of experts, seminars...). This is particularly important for fields of knowledge such as "e) regulatory framework and requirements".	NCA's may not necessarily ask for certain types of documents by way of demonstration of knowledge but it is not likely that additional further information that undertakings want to submit would be rejected and not taken into consideration.
289.	German Insurance Association (GDV)	1.31	Section 1.34 of the corresponding explanatory text mentions that the undertaking « has to assess the fitness and propriety regarding ... all persons working within a key function». The coverage of all persons is neither mentioned in Guideline 11 nor in the other Fit & Proper-Guidelines.	Working within a key function is the same as "having a key function" as referred to in article 42 (1) of the Solvency II Directive. This 'having of a key function' is to be distinguished from being responsible for a key function, as referred to in article 42(2) of the Solvency II Directive. EIOPA considered it necessary to clarify this by including the

			<p>With a reference to Article 42 Solvency II Directive, Guideline 11 mentions the « administrative, supervisory or management body ». However, Article 42 does not mention the « administrative, supervisory or management body ». Therefore, Guideline 11 should be designed in line with Article 42 and, consequently, this Guideline should use the language of the Directive without extending its meaning.</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>	<p>Explanatory Text. Please also refer to recital 34.</p> <p>EIOPA considers that persons who effectively run the undertaking or have other key functions at least includes members of the AMSB, as is expected to be covered by the Implementing Measures.</p> <p>EIOPA does not want to specify further which 'bodies' of the AMSB are being covered or not by this Guideline. This very much depends on Member State corporate law or supervisory law. Normally, the administrative and management body will be covered anyway. Dependent on Member State corporate law or supervisory law, the supervisory body may also be covered.</p>
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290.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.31	<p>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 and training arrangements for 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.</p> <p>We have suggested that this guideline should include consideration of adequacy of training arrangements in support of diversity.</p>	<p>EIOPA does not disagree that it would be a good idea for undertakings to take this into consideration, would however not go so far as to say that undertakings have to provide this kind of training or justify why they do not consider this appropriate.</p>
291.	Insurance Europe	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 requirement 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</p>	<p>The text of the Guideline has been changed to take the comment into account.</p> <p>EIOPA has clarified this (it is the latter).</p> <p>Please refer to resolution to comment 289.</p> <p>Please refer to resolution to comment 289.</p>

			<p>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>	
293.	NFU - Nordic Financial Unions	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 appropriate diversity 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) « 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.</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>Noted.</p> <p>This is not the kind of qualification that is sufficient for a person who effectively runs the undertaking to be considered fit.</p> <p>Noted.</p>

			<p>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.</p> <p>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. »</p> <p>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</p>	<p>This kind of information may be useful but is not essential for the sound and prudent management of an undertaking.</p> <p>Employee representatives are subject to fitness requirements as well and cannot automatically be assumed to be fit. The Explanatory Text clarifies that the support a person who needs to be fit gets from qualified and experienced employees can to some extent supplement their qualifications and experience.</p> <p>Noted.</p>
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			<p>participation in boards should mean actual influence.</p> <p>On the grounds of the above justification NFU suggests the following additional wording for 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. Where applicable, employee representation on company boards should be respected and promoted in this regard.</p>	<p>Where employee representation is required by national law this should of course be respected. But as this issue is outside the scope of Solvency II, EIOPA will not address it in a Guideline.</p>
294.	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.31	<p>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. 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>EIOPA considers it not appropriate or feasible to precise further in detail what is covered by persons who effectively run the undertaking or have other key functions. Any such ‘definition’ would unintentional exclude person who may in a specific case be considered as a person who effectively runs the undertaking or has another key function. Such specific cases would be much</p>

			<p>Additionally, who will be responsible for identifying “persons who effectively run the undertaking or have other key functions” – undertaking or NCA?</p>	<p>dependent on specific circumstances according to Member State law or regulations or to the specific circumstances of the relevant undertaking.</p> <p>It is in the first place the undertaking that identifies any person who effectively runs the undertaking or has another key function. As part of the assessment process, according to article 42 (2) of the Directive, by the supervisory authority, the latter will also review the identification criteria and process, and the assessment by the undertaking.</p>
295.	ROAM- Réunion des Organismes d'assurance mutuell	1.31	<p>Le contrôle des exigences de compétences selon l'article 42 de la directive relève de la responsabilité des entreprises et non pas de l'autorité nationale comme le laisse sous entendre la guideline 11.</p>	<p>EIOPA has corrected this point.</p>
297.	Aon Ltd	1.32	<p>Is there an expectation that more than one member of the AMSB has a reasonable level of expertise in a particular area to ensure that there is an acceptable level of challenge on business decisions and risks (i.e. where the Board member who possesses the financial knowledge is also the Board member that heads the Finance function ? .</p>	<p>The other members of the AMSB have to be able to challenge the “specialist” so it is not possible for members to just concentrate on</p>

			Please can this be clarified in the guidance?	their area of expertise and rely on the other areas to be covered by their colleagues.
298.	Association of Financial Mutuals	1.32	The requirement to have « qualification, experience and knowledge about....actuarial analysis » could be interpreted as requiring all AMSBs to have an actuary as a member. Is this the intention?	This is not intended. What is meant is that the AMSB collectively possess qualification, experience and knowledge to challenge the actuarial function.
299.	DIMA (Dublin International Insurance & Management	1.32	The wording should be amended to read: "...the members of the administrative, management or supervisory body collectively possess relevant qualifications , experience and knowledge where appropriate about..."	Disagree.
300.	German Insurance Association (GDV)	1.32	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 replace "markets" in 1.32 a) by "sectors" if deemed appropriate. .	The proposed change would not be appropriate here as EIOPA definitely does not mean to refer to other financial sectors. Incidentally, you are misinterpreting the draft Level 2 text: a person is not required to have knowledge about other financial sectors to be considered fit, rather in assessing a person's fitness their knowledge and experience of other financial sectors is taken into account – so such knowledge and

				experience is not a pre-condition for fitness but "counts" as well.
301.	Groupe Consultatif Actuariel Européen	1.32	<p>The guideline states the AMSB 'collectively possess at least qualification, experience and knowledge' in a number of key areas. Perhaps the adjective 'sufficient' rather than 'at least' would be more appropriate. As currently it could imply that a qualification is needed on the AMSB for each area identified in this point.</p> <p>The absence of clarity on how firms can verify that they collectively possess sufficient qualification, experience and knowledge about each of the five key areas listed may also lead to calls for guidance on the degree of experience and specific qualifications for individuals fulfilling the relevant key functions.</p>	<p>Disagree with deleting 'at least'. a) to e) is not exhaustive.</p> <p>But EIOPA has included "appropriate" in order to denote that the required level of qualification etc. on each of the areas named is not necessarily the same.</p> <p>Noted.</p>
302.	Institut des Actuaire	1.32	We don't understand practically which process can be used to ensure the collective fit requirement of the AMSB. GCAE could propose criteria to help insurers in deciding who is fit & proper.	Noted.
303.	Insurance Association of Cyprus	1.32	We consider it important that EIOPA mentions explicitly in the guidelines that during the preparatory stage there is no requirement to adjust Board membership to ensure that the Board is collectively fit.	These are preparatory Guidelines meant to guide undertakings to adjust Board membership, if necessary in preparation of the application of the Solvency II Directive.

304.	Insurance Europe	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>	<p>Please refer to resolution to comment 303.</p> <p>Please refer to the resolution to comment 300.</p> <p>Noted.</p>
305.	MGM Advantage	1.32	<p>The requirement to have « qualification, experience and knowledge about....actuarial analysis » could be interpreted as requiring all AMSBs to have an actuary as a member, is this intended? It would be useful to clarify that this is not the intended outcome.</p>	<p>Please refer to the resolution to comment 298.</p>
306.	NFU - Nordic Financial Unions	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 e.g. through training when needed, that the members of the administrative, management or supervisory body collectively possesses at least</p>	<p>Noted.</p> <p>Guidelines are not to include examples and EIOPA does not generally point out how the desired goal can be achieved.</p>

			qualification, experiences and knowledge about:	
307.	Nordea Life & Pensions	1.32	The requirements are general and make it possible to implement the requirements very differently from country to country. To ensure more consistent regulations in the member states, the requirements should be based on more specific conditions.	Disagree. EIOPA has tried to seek a balance between being specific enough to be able to comply with the Guideline on the one hand and not to be too specific to the detriment of proportionality.
308.	ASSURALIA	1.33	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. It should also be specified that only relevant criminal, financial, supervisory aspects should be taken into account in the assessment whether a person is 'proper' since the same guideline mentions that the assessment has to be made on relevant evidence. An overview of relevant criminal, financial and supervisory aspects is provided in the explanatory text.	Please refer to the resolution to comment 307. If the evidence concerns criminal etc. aspects which are not relevant it is not "relevant evidence".
309.	Deloitte Touche Tohmatsu	1.33	The term financial soundness is vague and we request further definition and examples of what a firm would need to do to satisfy these requirements in order to ensure a consistent implementation with the Union.	EIOPA does not prescribe what an undertaking has to do in order to meet requirements.
311.	French Federation of Insurance Companies (FFSA)	1.33	In addition to Insurance Europe Comments, Guidelines should not extend the scope and commitments of criminal sanctions set out by criminal national law.	For the moment this is not further harmonised within the European Union. It is up to Member States to determine how national criminal law is taken into account.

312.	German Insurance Association (GDV)	1.33	<p>Guideline 12 proposes a proper test including the assessment of character and personal behaviour. It is not clear what evidence regarding character and personal behaviour is needed besides criminal, financial and supervisory aspects. Therefore, « character and personal behaviour » should be deleted here.</p> <p>On 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. However, a conflict of interest is a matter of fact and therefore should not be subjected to such a personal view. On paragraph 1.52 is also stated that proper consideration is relevant for « all » employees of an undertaking. This is true, however, Article 42 Solvency II Directive does not cover all employees. As a consequence, this proper consideration should not be made here.</p>	<p>The undertaking should take into account any relevant negative evidence it has about a person's character and personal behaviour.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
313.	Groupe Consultatif Actuariel Européen	1.33	The phrase personal behaviour is a vague concept	EIOPA disagrees. It means the behaviour of a person outside the business context.
314.	Institut des Actuaire	1.33	The « personal behaviour » is a vague concept.	Please refer to the resolution to comment 313.
315.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.33	<p>'Personal behaviour' may be inappropriately open-ended. It might be deleted or the phraseology might be '...character and conduct including any criminal, financial, supervisory aspects (both business and personal) regardless of location.</p> <p>We understand that what is proposed here is different from the corresponding wording used in relation to the banking sector. Any such difference seems unlikely to be helpful and it may be that the wording should be standardised.</p>	EIOPA does not consider that there is a difference between "personal behaviour" and "personal conduct". However, what on purpose has been distinguished here is 'personal behaviour' and 'business conduct'.
316.	Insurance	1.33	The Guideline should be more specific by mentioning that the requirement	Because of the

	Europe		<p>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>	<p>reference to article 42 this Guideline applies to persons who effectively run the undertaking or have other key functions.</p> <p>Please refer to resolution to comment 311.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
317.	Nordea Life & Pensions	1.33	<p>Making an assessment of a person's character and personal behaviour as a requirements, depends one more guidelines regarding what assessment that is required.</p>	<p>EIOPA understands your comment to mean that guidance is required as to what a person's character and personal behaviour would have to be like in order for the assessment to be concluded with a positive result. Actually, it is not necessary to render a judgement about a person's character and personal behaviour. This is about the absence of relevant negative information.</p>
	Powszechny	1.33	<p>We assume that the requirements (similarly as 'fit requirements') relate</p>	<p>Correct. Since only</p>

	Zakład Ubezpieczeń Spółka Akcyjna		only 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.	persons who effectively run the undertakings or have other key functions are subject to the fit and proper requirements set out in Article 42 and the Guideline is explicitly based on that Article this should be sufficient to realise that other staff members are outside the scope of the requirement.
318.	ROAM- Réunion des Organismes d'assurance mutuell	1.33	L'exigence d'honorabilité devrait couvrir selon nous également les conflits d'intérêts.	Noted and agree.
319.	AMICE	1.34	Guideline 13 – Fit and proper policies and procedures We would like to remind EIOPA that the Directive (art. 42) and the Level 2 measures (Art. 263 SG11) limit the fit and proper requirements to "persons who effectively run the undertaking or have other key functions.". Further guidance is needed on the scope of this requirement. In our view, the insurance companies should define the "profile" of the persons concerned (business function, status, level of responsibility ...).	EIOPA has changed the Guidelines to clarify that this is not the intended meaning.
320.	CRO Forum and CFO Forum	1.34	1.34c: The requirements regarding «Fit & Proper» should not be relevant for so called «other relevant personnel ». This could lead to extensive discussions. The requirements for «key personell» should be enough.	Please refer to resolution to comment 319.
321.	DIMA (Dublin International	1.34	c) The reference to other "relevant personnel not subject to the requirements of Article 42" seems very wide indeed – a catch all. It	Please refer to resolution to comment

	Insurance & Management		should be clarified or deleted. The fit and proper regime is understandable for certain roles within senior management, but consistency is needed as to how this is applied and to whom across the EEA. The current drafting of the guideline leaves open the possibility of a very wide interpretation by member states, which is counterproductive to the aspirations of a convergence towards maximum harmonisation.	319.
323.	German Insurance Association (GDV)	1.34	<p>Is required in b) « 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 would propose to delete b).</p> <p>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. We do not believe to be appropriate to impose any Guidelines with a wider scope than Level 1. As such we would propose to delete c).</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 would propose to delete it.</p>	<p>On-going assessment and mandatory re-assessment under certain circumstances are not mutually exclusive. Having “trigger-events” ensures that a formal assessment is undertaken where there are good reasons to question the continued propriety of a person.</p> <p>Please refer to the resolution to comment 319.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
324.	Insurance Association of Cyprus	1.34	We consider that point (c) goes beyond Art.42 of Solvency II at it requires undertakings to include in their fit and proper policy a description of the procedure for assessing fitness and propriety for personnel other than	Please refer to the resolution to comment 319.

			those who effectively run the business or have other key functions. We propose deletion of point (c).	
325.	Insurance Europe	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> <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>	<p>Article 41 (3) of the Solvency II Directive refers to a non-exhaustive list of written policies (“at least”). This Guideline details supervisory expectations as regards a policy on fit and proper requirements.</p> <p>Please refer to resolution to comment 323.</p> <p>Please refer to resolution to comment 319.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
326.	International Underwriting	1.34	The reference to relevant personnel appears to suggest that large numbers of staff members should be subject to the fit and proper	Please refer to the resolution to comment

	Association of London (IUA)		requirements. In our view the reference should be to essential or critical employees.	319.
327.	Polish Chamber of Insurance	1.34	A clear definition of « key function » is required in terms if this is a person(s) supervising the activities in the respective areas of key functions or all people involved in all the tasks of the functions. In this context it is crucial to identify the persons who should meet the requirements of fit and proper.	The key function encompasses all persons involved in the tasks of the function. All these persons are subject to fit and proper requirements. Please refer to resolution to comment 289 as well.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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>	<p>The policy is not subject to prior approval but the NCA could review it during inspections or ask for it to review it off-site.</p> <p>Please refer to the Explanatory Text. Guidelines are not supposed to give explanations or definitions.</p> <p>It is up to the undertaking to define such reassessment factors.</p> <p>Please refer to the resolution to comment 319.</p>

328.	ROAM- Réunion des Organismes d'assurance mutuell	1.34	<p>L'obligation d'avoir une politique (écrite) relative à la compétence et l'honorabilité n'est pas prévue par la directive. Quel est le fondement légal de cette nouvelle politique ? Alors qu'elle n'est pas prévue à l'article 41, serait-elle soumise à l'art. 41-3 de la directive (obligation d'un réexamen annuel, approbation préalable de l'AMSB ...) ?</p> <p>Par ailleurs, la guideline 13 c) va au-delà de la directive en imposant la mise en place d'un contrôle de compétence et d'honorabilité pour des personnes non soumises aux exigences de l'article 42 de la directive SII. En effet, la directive (art.42) et les mesures de niveau 2 (art. 263 SG11) réservent les exigences de compétence et d'honorabilité aux seules « personnes qui dirigent effectivement l'entreprise ou qui occupent d'autres fonctions clés ». Il ne nous paraît donc pas acceptable d'étendre l'obligation au-delà de ces personnes. Enfin, quel serait le périmètre de cette nouvelle obligation ? Appartient-il à chaque entreprise de définir le « profil » des personnes concernées (fonctions dans l'entreprise, statut, niveau de responsabilité ...).</p>	Please refer to the resolution to comment 319.
329.	RSA Insurance Group	1.34	We presume that it will be for the undertaking to determine which are « other relevant personnel » for the purpose of item (c)	Yes, but the expectation is that this will include any persons working in insurance-related areas whose tasks require that they have qualifications and take on responsibilities that are not immaterial.
330.	ACA	1.35	The fit and proper requirement of this guideline goes beyond the directive and other guidelines as it refers to "the persons employed by the service provider" whereas elsewhere only key functions are meant.	Please refer to resolution to comment 7.
331.	AMICE	1.35	<p>Guideline 14 – Outsourcing of key functions</p> <p>EIOPA states that the fit and proper requirements apply to the persons employed by the service provider or sub-service provider to perform the outsourced key function.</p>	Please refer to the resolution to comment 330. It is not "persons

			<p>Further clarification would be helpful in terms of what is meant by "persons employed by the service provider" here.</p> <p>We would suggest the following redrafting:</p> <p>... "national competent authorities should ensure that the undertaking applies the fit and proper requirement to the persons who effectively run the employed service provider or sub service provider to perform an outsourced key function".</p> <p>The persons who effectively run the service provider should ensure that their employees are fit and proper.</p>	<p>employed by the service provider" in general, but only "persons employed by the service provider to perform the outsourced key functions"</p> <p>EIOPA considers this not to be in line with the Solvency II Directive as the responsibility cannot be delegated from the undertaking to the service provider. There is also no justification for applying fit and proper requirements to persons who effectively run the service provider.</p>
332.	ASSURALIA	1.35	<p>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 & proper requirements.</p>	<p>Monitoring the service provider on the application of the fit and proper requirements would meet the Guideline.</p>
333.	CRO Forum and CFO Forum	1.35	<p>This guideline is not consistent with the overriding principal of proportionality in the Directive. Moreover, it goes beyond the scope of directive. It is very onerous to have to apply fit and proper requirements to all persons employed by a service provider. We suggest that this requirement is only practical when applied for the persons responsible for carrying out the key function to meet 'fit and proper' requirements.</p>	<p>The Guideline does not require that all persons employed by the service provider should be fit and proper. However, applying the requirements only to</p>

			<p>We agree that this quality assessment is important, but question the requirement of a 'designated' person, i.e. the task being performed on a regularly basis should be sufficient.</p> <p>The current guidelines make no mention of a derogation in respect of group entities or a derogation where checks have already been carried out under other EEA countries' fitness and probity regimes. We would like to see these points included for the final version of the Guidelines.</p> <p>Note: Article 42 referred to fit and proper requirements for holders of key functions (did not include all their staff).</p>	<p>the person responsible for carrying out the key function is too narrow. The scope of the fit and proper requirement is for all persons performing the key function at the service provider.</p> <p>It can be the case if the group F&P policy is the same as the one of the entity concerned.</p> <p>Article 42 refers to persons who have key functions. These do include all the staff performing key function tasks. Only the notification requirement is limited to the person responsible for the key function.</p>
334.	Deloitte Touche Tohmatsu	1.35	<p>The current wording of the paragraph suggests that for the interim period, the undertaking is responsible for carrying out a fit a proper assessment of its service providers. Given that the Solvency II requirements do not apply at this point in time, it seems unreasonable that undertakings are required to apply these requirements. We suggest that undertakings are responsible for taking appropriate steps to ensure that the service provider will meet these requirements on the relevant timescales. Additionally, the current wording indicates that the outsourcing requirements will only be applied to the key functions that are defined as the risk management function, compliance function, internal audit function and actuarial function (critical and important functions are not mentioned). If this is the case, can these functions be specifically</p>	<p>The requirements have to be complied with at the start of Solvency II. That means the expectation is that the preparatory period is used for ensuring this compliance.</p> <p>Actually, the wording indicates no such thing. Key functions can include additional key</p>

			<p>identified to facilitate consistent application across all jurisdictions.</p> <p>Thus, we propose rewording the paragraph as follows: "In accordance with Article 42 and 49 of Solvency II, national competent authorities should ensure that the undertaking has taken appropriate steps to ensure that the service provider or sub service provider materially meets the fit and proper requirements when performing risk management, actuarial, internal audit and/or compliance functions."</p>	<p>functions.</p> <p>It is not the service provider that has to meet – and not just materially meet - the fit and proper requirements but persons performing outsourced key functions at the service provider. Please also refer to the resolution to comment 335.</p>
335.	DIMA (Dublin International Insurance & Management)	1.35	<p>Wording should be amended to read: "... the undertaking applies the fit and proper requirements to the key persons employed..."</p>	<p>This would not be in line with the Solvency II Directive. The fit and proper requirements apply to all persons having key functions irrespective of whether the key function is performed in-house or outsourced.</p>
336.	German Insurance Association (GDV)	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. We would propose the alignment of the fit and proper requirements with the requirements of the framework directive and the Level 2 draft. Also "to perform" should be replaced by "having".</p>	<p>Please refer to the resolution to comment 333.</p> <p>It does already. EIOPA prefers to use "perform" instead of "have" as this is clearer in conveying that everybody who works in a key function is included.</p>

337.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.35	<p>We think it useful to concentrate on the persons taking responsibility for a key function, as opposed to all who may be working on it. This guideline might therefore be clarified as :</p> <p>In accordance with Article 42 and 49 of Solvency II, national competent authorities should ensure that the undertaking applies the fit and proper requirements to the persons designated by the service provider or sub service provider as responsible for the performance of an outsourced key function.</p> <p>Note : Paragraph 1.54 of the explanatory text should be amended similarly.</p>	<p>This would not be in line with the Solvency II Directive. The fit and proper requirements apply to all persons having key functions. The requirement ensures a certain level of quality for the performance of the key function that cannot be circumvented by outsourcing the key function. Only the notification requirement is limited to the person responsible for the key function.</p>
338.	Insurance Association of Cyprus	1.35	<p>We consider that this guideline goes beyond what is required in articles 42 and 49 of Solvency II, as those articles do not require that all persons employed by the service provider need to be fit and proper. We propose a redrafting in line with the Level 1 text.</p>	<p>Please refer to the resolution to comment 333.</p>
339.	Insurance Europe	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</p>	<p>Please refer to the resolution to comment 333.</p> <p>It does that already.</p> <p>The responsibility</p>

			<p>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 & proper requirements.</p> <p>It is paramount that this is not applicable for existing agreements during the preparatory phase.</p>	<p>cannot be delegated only shared, so monitoring the service provider if the assessment is not performed by the outsourcing undertaking itself is definitely necessary.</p> <p>As the requirements apply to existing agreements from the start of Solvency II, undertakings are expected to use the preparatory phase for ensuring compliance.</p>
341.	Nordea Life & Pensions	1.35	The undertaking should only be responsible for applying a fit and proper assessment for own employees. When outsourcing key functions, the requirements should be limited to looking after that the service provider or sub service provider are making the fit and proper assessment satisfactory.	It is possible to do it this way.
342.	Polish Chamber of Insurance	1.35	See 1.34	Please refer to the resolution to comment 327.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.35	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	<p>Please refer to the resolution to comment 333.</p> <p>The prohibition of outsourcing of key</p>

			<p>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>	<p>functions would not be in line with the Solvency II Directive.</p> <p>This would not be in line with the Solvency II Directive either.</p>
343.	ROAM- Réunion des Organismes d'assurance mutuell	1.35		
344.	RSA Insurance Group	1.35	<p>We are concerned with the requirements as drafted in this section. Ensuring that the fit and proper test applies to all persons employed by a service provider, where the service outsourced is a key function, is overly onerous. We believe that the fit and proper requirements should only be checked for the senior management of the firm or those people contracted to work on the insurance firm's account. Checking fitness and propriety of all staff employed at a service provider would not only increase costs but also delay the process as these checks can take between 3 and 6 months depending on the country. Some European countries are not allowed by law to do credit and criminal checks and the local legislation would need to change before this can be implemented.</p> <p>We also believe conducting fit and proper checks on all persons employed at a service provider, where the service outsourced is a key function, is more onerous than the requirements applied to the undertaking. According to 1.31 and 1.32 fit and proper checks within an undertaking are only required to be done on persons employed in key functions and persons on the ASMB.</p>	<p>Please refer to the resolution to comment 333.</p> <p>Not quite. The assessment covers persons who effectively run the undertaking which is wider than just</p>

				the AMSB and includes senior management.
346.	ACA	1.36	<p>It should be made clear the outsourcing means external outsourcing (i.e. a service provider outside the scope of Solvency II). The requirements should not be relevant for outsourcing of key functions within the group if it is provided by an undertaking subject to a regulated activity (Solvency II or Banking regulation).</p> <p>This point goes beyond the directive by naming a person responsible for the outsourced key function. How can this person have all the knowledge of the outsourcing undertaking?</p>	<p>The requirements also apply to intra-group outsourcing.</p> <p>According to Article 49 of the Solvency II Directive the undertakings remains responsible for outsourced functions and activities. This responsibility requires that there is oversight over the outsourced function or activity. It is not necessary for the person who provides the oversight to have all the knowledge of the outsourcing undertaking. Oversight of the performance of a task requires less knowledge than performing the task oneself.</p>
347.	Aon Ltd	1.36	<p>It is unclear how this requirement will work in practice. Processes are frequently outsourced where the organisation does not have the appropriate skills, experience or resource to perform the outsourced process. There is some clarity in the explanatory text, but could some of the key points be brought into the guidance?</p>	<p>The outsourcing undertaking still needs to have somebody knowledgeable enough about the outsourced function or activity to provide appropriate</p>

				oversight. The Guidelines are not supposed to include explanations.
348.	CRO Forum and CFO Forum	1.36	(Not included at Level 3? Appears to be a new requirement) The extension is that it requires to designate a person, a committee would not be sufficient anymore. We deem this is excessive and suggest to change the text to "...ensure that the undertaking designates a person or committee within the undertaking....." .	The person responsible for the oversight is the person responsible for the key function. That is always one person, not a committee.
349.	DIMA (Dublin International Insurance & Management	1.36	Where a person in the undertaking is designated responsible for the function outsourced to the service provider in accordance with guideline 14, it is unclear how fit and proper rules would apply to that person, given that he or she will not have the experience required by fit and proper requirements. This only makes sense if that person is fit and proper as a result of another position held.	Please refer to the resolution to comment 346. There is no "general fitness". A person is always fit or not with regard to a specific position.
350.	ECIROA	1.36	For captives which are members of industrial, commercial or financial institution groups, this guideline may not be workable as stated (because outsourcing may be managed at a group level).	Noted but the requirement follows from the Solvency II Directive and not the Guidelines.
351.	German Insurance Association (GDV)	1.36	This Guideline seems to go beyond what is required in Level 1 and draft Level 2.. 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.	While Guideline 14 only applies to the outsourcing of key functions, some sort of oversight

			<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>	<p>commensurate with the importance of the outsourced function or activity is of course required for all outsourcing of functions and insurance activities – which includes IT.</p> <p>Please refer to the resolution to comment 348.</p> <p>That members of the AMSB possess the necessary knowledge can by no means be taken as “given”.</p>
352.	Groupe Consultatif Actuariel Européen	1.36	<p>It seems inconsistent that a “person is designated” for the purpose stated here whereas no such designation of a single “person” is used for the four designated functions (including the AF) It is obviously important that when a function is outsourced, the quality of work is assessed and ‘challenged’. It is not clear what level of knowledge and experience is needed for the key function holder inside the entity to make this challenge? This would be very relevant to outsourced actuarial activities.</p>	<p>For key functions that are not outsourced there needs to be a person responsible for the key function as well who is subject to a notification requirement according to Article 42 of the Solvency II Directive. The level of knowledge and experience needs to be such that effective oversight can take place.</p>
353.	Insurance and Reinsurance	1.36	<p>For undertakings which are members of groups, this guideline may not be workable as stated (because outsourcing may be managed at a group</p>	<p>Please refer to resolution to comment</p>

	Stakeholder Group (IRSG)		level).	350.
354.	Insurance Association of Cyprus	1.36	<p>The wording of Solvency II Article 49 does not state that there should be a fit and proper person within the undertaking who is responsible for the outsourced activity.</p> <p>If EIOPA wishes to have such a requirement, we propose to restrict it only to outsourcing of critical and particularly important activities of the key functions. Otherwise, the outsourcing of activities of the key functions that are very technical and detailed but not critical (i.e IT works) would require a fit and proper person within the insurer itself, which may be difficult.</p>	<p>Please refer to the resolution to comment 348.</p> <p>EIOPA does not see how IT could not be considered critical or important. Please note that what "fit" requires is commensurate to the task of the person who needs to be fit and oversight does not have the same requirements as performance of the task itself.</p>
355.	Insurance Europe	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>	<p>Please refer to the resolution to comment 354.</p> <p>Please refer to the resolution to comment 351.</p>

358.	Groupe Consultatif Actuariel Européen	Chapter III General Comments	<p>The guidelines do not distinguish sufficiently clearly between risks to solvency and capital and other risks which may be covered by the risk management function. Other risks could relate to an insurance undertaking's targets for share prices earnings, market share, customer satisfaction, employee satisfaction and so on. Solvency II does not relate to these other risks (article 27 of the directive) but the guidelines, as written, appear to apply to them.</p> <p>A paragraph placed before 1.37 could ensure that the guidelines cover the risk management activity in relation to solvency and capital but not all risk management activity.</p>	<p>The Risk Management System covers any risk an undertaking is or could be exposed to. This is not restricted to the risks covered by the SCR as is explicitly expressed in the introduction of article 44 (2) of the Solvency II Directive. Thus, the 'other risks' referred to in the comment, should be covered by the Risk Management System and for that reason by the present Guidelines.</p> <p>Disagree. Risk Management is not about solvency and capital only. Please refer to the preceding resolution.</p>
	Lloyd's	Chapter III General Comments	<p>This section imposes detailed and prescriptive rules relating to risk management on undertakings. We question whether these levels of detail and prescription are appropriate for preparatory Guidelines.</p> <p>The Chapter implies that NCAs will be required to apply Article 44 to undertakings, although it does not actually say so. It would aid clarity if there was an initial Guideline in this chapter, requiring undertakings to have effective risk management systems and setting out in the high-level</p>	Disagree. Guidelines are not supposed to repeat Directive requirements.

			language of Article 44(2) what they should cover.	
359.	MSV Life	Chapter III General Comments	<p>Although in general the guidelines are principles of outcomes based this Chapter is very prescriptive particularly in the supporting text (e.g. the contents of the Risk Management Policy). Hence those small insurers who already have well- established risk and governance frameworks may still have considerable work to do in order to demonstrate that they comply.</p> <p>Furthermore, it is not clear from the proposed guidelines to what extent can certain roles or functions be combined. More information was expected (particularly by Smaller Companies) about the degree to which it is acceptable to combine certain roles or functions. By way of example can the Internal Controls function be combined with Risk Management and can the Legal and Compliance Function be combined with the Risk Management Function.</p>	<p>The Guidelines only say what needs to be considered in the risk management policies not how the policies should be drafted. That is hardly "prescriptive".</p> <p>Noted.</p> <p>It is expected that the Implementing Measures will require separation of functions, except for small undertakings.</p>
360.	AMICE	1.37	<p>Guideline 15 – Role of the administrative, management or supervisory body</p> <p>The AMSB shall be regarded as a plural term which fits into any type of governance model. The assignment of tasks and responsibilities to the AMSB should not pre-empt the organizational structure of the undertaking. The division of duties between management and board should be left to the undertaking.</p>	<p>What AMSB means is determined by national company law, not by the governance model of an undertaking. The division of duties has to respect national company law and regulatory requirements.</p>
361.	Deloitte Touche Tohmatsu	1.37	<p>The Level 1 text and draft Level 2 text do not contain reference to risk appetites. We propose replacing risk appetite with "risk strategy" for consistent application across all jurisdictions in line with the Article 44 of the Directive.</p>	<p>EIOPA disagrees.</p> <p>"Risk appetite" is a commonly used term. "Risk strategy" is definitely not interchangeable with "risk appetite" as it encompasses much more.</p>

363.	FEE	1.37	It appears that there an overlap between Paragraphs 1.37 and 1.42	EIOPA disagrees. There is neither overlap nor inconsistency. Consistent implementation does not exclude that the AMSB at individual level has a responsibility as consistency does not imply sameness.
364.	German Insurance Association (GDV)	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.	The Explanatory Text is outside the scope of this consultation. Article 44 clearly states that the risk management system shall cover the risks to be included in the calculation of the SCR as well as risks which are not fully included in the calculation thereof.
365.	Insurance Europe	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.	Please refer to the resolution of comment 364.
367.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.37	The responsibility of the AMSB counts for the whole system of governance. We see no need to emphasis this responsibility for the risk management system and the other components. In ECIIA point of view, the above mentioned "three lines of defence" model implies a correct balance between the different control units. Its use could be an effective practical mean to a coordinated and integrated approach to risk management and a common risk language across the organisation.	Disagree. Guidelines are not supposed to repeat Solvency II Directive requirements. This also applies to the overall responsibility of the AMSB for the System of Governance, which is

			Delete and add a paragraph in Guideline 3 stating the responsibility of the AMSB for the overall system of governance including the approval of the policies for all key functions.	covered by article 40 of the Solvency II Directive. This Guideline just specifies the supervisory expectations as regards AMSB's responsibility for the Risk Management System.
368	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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.	EIOPA disagrees. This is up to the undertaking to decide.
369.	Aon Ltd	1.38	It is possible that this requirement as currently written will create conflicts within the Group, particularly where there are different appetites for risk between the parent and subsidiary. Given this, it is also possible that the nature of a subsidiary business requires a different policy and risk management approach to a particular risk from that of the parent with a different risk appetite and policy.	Please refer to the second paragraph of Guideline 3. Noted.
370.	CRO Forum and CFO Forum	1.38	.	
371.	Deloitte Touche Tohmatsu	1.38	The Level 1 text Article 246 refers to the risk management system set out in Article 44 which includes putting in places the systems necessary to identify, measure, monitor, manage and report the risks to which the business is exposed. We propose rewording sub-paragraph c. to the following: "the identification, measurement, management, monitoring and reporting of risks at group level." Additionally, the Level 1 text and draft Level 2 text do not contain reference to risk appetites. We propose replacing risk appetite with "risk strategy" for consistent application across all jurisdictions in line with the Article 44 of the Directive.	Agree Noted, but it is a widely used concept.

372.	DIMA (Dublin International Insurance & Management)	1.38	The responsibility for strategic decisions and policies on risk management at group level is the responsibility of the administrative, management or supervisory body, which is also responsible for the effectiveness of the risk management system. The wording here implies that the risk management system itself is responsible for the strategic decisions and policies on risk management, contradicting the administrative, management or supervisory body's responsibilities in that regard.	Disagree: the Guideline is about the risk management system and not about the risk management function.
375.	German Insurance Association (GDV)	1.38	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. » 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 ». Often the responsible entity at group level does not have the (legal) power to manage and control the risks at the whole group.	It is already in article 44 of the Solvency II Directive and the Guidelines do not repeat the Directive. Article 44 applies mutatis mutandis at group level. Then it contradicts the Solvency II Directive.
376.	Insurance Europe	1.38	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. » 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 ».	Please refer to the resolution to comment 375. Please refer to the resolution to comment 375.
378.	The European Confederation of Institutes of	1.38	The responsibility of the AMSB counts for the whole system of governance. We see no need to emphasis this responsibility for the risk management system and the other components. In ECIIA point of view,	Please refer to the resolution to comment 372.

	Internal Auditing (ECIIA)		<p>the above mentioned "three lines of defence" model implies a correct balance between the different control units.</p> <p>Delete and add a paragraph in Guideline 3 stating the responsibility of the AMSB for the overall system of governance including the approval of the policies for all key functions.</p>	Disagree.
381.	German Insurance Association (GDV)	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 ». 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.	Agree.
382.	Insurance Europe	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 . 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.	Agree: Please refer to the resolution to comment 381.
384.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.39	<p>The responsibility of the AMSB counts for the whole system of governance. We see no need to emphasis this responsibility for the risk management system and the other components. In ECIIA point of view, the above mentioned "three lines of defence" model implies a correct balance between the different control units.</p> <p>Delete and add a paragraph in Guideline 3 stating the responsibility of the AMSB for the overall system of governance including the approval of the policies for all key functions.</p>	<p>Please refer to the resolution to comment 372.</p> <p>Disagree.</p>
386.	AMICE	1.40	<p>Guideline 16 – Risk Management policy</p> <p>Proportionality needs to be applied especially with regards to the level of completeness required from the documentation. The request to include this sub-policy should not be mandatory during the interim phase.</p>	In order to prepare for Solvency II it is necessary for undertakings to establish such a policy during the preparatory phase.
387.	Aon Ltd	1.40	It is unclear how section c) of the paragraph is intended to work.	The undertaking has to

				show in its risk management policy that it has taken into account how the risks it is exposed to affect its overall solvency needs and its regulatory requirements and has set its overall risk tolerance limits accordingly.
388.	ASSURALIA	1.40	As a part of their ongoing risk management companies will execute the ORSA on a forward-looking basis as well as periodically conduct stress tests to examine the impact of 'tail events' which in fact are exceptional situations. The requirement under point e) to describe situations which warrant additional 'special stress tests' is confusing. It is proposed to change the wording and to require undertakings to describe a number of situations in which they would execute an 'ad hoc stress test'.	Agree. EIOPA has changed the wording according to your suggestion.
389.	CRO Forum and CFO Forum	1.40	For the risk management policy, see our general comments regarding policies and explanatory text. This is too prescriptive and the explanatory text seems to add additional requirements rather than be illustrative.	Explanatory Text is not subject to consultation.
390.	Deloitte Touche Tohmatsu	1.40	This requirement is restrictive in how an undertaking is expected to embed risk management. It excludes other forms of organisational documentation that may be more appropriate for meeting this requirement, such as risk standards, manuals, protocols, business processes, etc. We would like to propose replacing risk management policy with following wording: "formal risk management documentation". Additionally, the Level 1 text and draft Level 2 text do not contain reference to risk appetites. We propose replacing risk appetite with "risk	EIOPA disagrees. The Solvency II Directive requires 'written policies' and EIOPA does not want to deviate from that, irrespective of how such written policies are referred to internally. Please refer to the resolution to comment

			strategy” for consistent application across all jurisdictions in line with the Article 44 of the Directive.	361.
391.	DIMA (Dublin International Insurance & Management	1.40	The risk management policy described in this paragraph is relatively prescriptive in nature and adds a new element (e) relating to stress tests. These interim arrangements are a route to the full Solvency II environment, and as such new elements such as (e) should not be introduced at this point in time.	<p>The Guideline just names the issues the undertaking needs to consider when drafting its risk management policy without describing how the undertaking is supposed to manage its risk. That can hardly be called prescriptive.</p> <p>The Solvency II Directive contains references to stress tests where, based on article 34 (4), supervisory authorities may require undertakings to perform tests in order to assess undertakings’ ability to cope with possible event or future changes in economic conditions that could have unfavourable effects on their overall financial standing.</p>
392.	ECIROA	1.40	With regards to risk categories: could the undertaking define its own risk categories, ensuring that all areas mentioned in Article 44 of Solvency II	Yes, but the burden for “translating” this for the

			(underwriting and reserving, asset-liability management, investment, liquidity and concentration, operational risk, reinsurance and other risk mitigation techniques) are properly covered?	purpose of communication with the NCA is on the undertaking.
394.	German Insurance Association (GDV)	1.40	<p>As equally observed for the other Guidelines, is not clear the scope of Guideline 16, namely if undertakings will also have to comply with Level 1 (art 44 (2)) and draft Level 2 apart from 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, is very burdensome to demonstrate compliance with every single item. We think this is not in line with a principle based approach targeting at precising What is to achieve rather than How.</p> <p>Besides, in e) is required 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 the Guideline 7 (1.33) of the Proposal for Guidelines on the Forward looking assessment of the undertaking’s own risks, should not be needed any additional requirement under the “System of Governance” and (e) should be deleted.</p>	<p>Please refer to “Status fo the Solvency II Directive and the Delegated Acts” of the Feedback Statement.</p> <p>EIOPA disagrees. Undertakings are certainly expected to currently have a risk management policy. The content of the policy as such is not prescribed, only the issues to be addressed.</p> <p>Furthermore, the ORSA is part of the Risk Management System, so the requirement to perform stress tests is an integral part of the Risk Management System requirements.</p> <p>Please also refer to the resolution to comment 391.</p> <p>Stress tests are about methodology, the Solvency II Directive does not prescribe</p>

				methodology outside regulatory requirements such as TP or the SCR.
395.	Groupe Consultatif Actuariel Européen	1.40	<p>A balance needs to be struck between prescribing risk management methodologies in the guidelines and not being overly prescriptive and granular in terms of how to carry out quantitative calculations. The guideline should also reflect the need for the risk management policy to change over time to cope with changes in the business environment. This guideline seems somewhat prescriptive in parts</p> <p>Conversely, we note that this guideline does not extend to covering roles, responsibilities, structure, breaches and relationship with other policies within the risk management policy.</p>	<p>The Guideline does not prescribe in any way how quantitative calculations are to be carried out or what methodologies are to be used.</p> <p>All policies are subject to regular review. Therefore EIOPA does not consider it necessary to stress the need to change over time.</p> <p>The Guideline has to be read in conjunction with GL 9, where it is stated that the undertaking should align its policies with each other. There is no intention to prescribe the structure and as the policies within the risk management policy are sub-policies the relationship should be clear. EIOPA expects breaches of policies to</p>

				be identified and addressed through the internal control system.
396.	Insurance Association of Cyprus	1.40	<p>The requirements go into a level of detail that is excessive for the preparatory phase. We believe there should be less detail in the requirements, in line with the principle-based approach to regulation.</p> <p>Moreover, we do not agree with the inclusion of a requirement for carrying out regular stress tests in point (e), especially since the carrying out of stress tests is already mentioned in the guidelines for ORSA. We thus propose deletion of point (e).</p> <p>Additionally, it is not clear whether undertakings also need to comply with the relevant text in Level 1 and, especially draft Level 2.</p>	<p>Please refer to "Purpose of the preparatory phase". The level of detail in the requirements respects the principle based approach.</p> <p>Please refer to the resolution to comment 394.</p> <p>Please refer to "Status of the Solvency II Directive and the Delegated Acts" of the Feedback Statement.</p>
397.	Insurance Europe	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>Please refer to "Status of the Solvency II directive and the Delegated Acts" of the Feedback Statement.</p> <p>Please refer to the resolution to comment "Purpose of the preparatory phase". The level of detail in the</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>	<p>requirements respects the principle based approach.</p> <p>Please refer to the resolution to comment 394.</p> <p>As undertakings are preparing to meet the future Solvency II requirements it is a reference to both Solvency I and Solvency II requirements.</p>
	Lloyd’s	1.40	<p>Sub-paragraph (e) requires an undertaking’s risk management policy to set out the frequency and content of regular stress tests. Although this is stated to be « <i>in accordance with Article 44</i> », in fact that Article does not mention stress testing and the only reference in the Directive to stress tests is to their use in reviews of group supervision under Article 242. Even the draft level 2 measures only require stress tests to be included « where appropriate ».</p> <p>Sub-paragraph (e) does not therefore appear to be an appropriate preparatory measure and we suggest that it is deleted.</p>	<p>Please refer t the resolution to comment 394.</p>
399.	Munich Re	1.40	<p>e.) Specific technical details should not be included to ensure a principle based approach.</p>	<p>This is not a technical detail. Expecting the use of tools that are state-of-the-art in</p>

				general is not inconsistent with a principle based approach.
400.	NFU - Nordic Financial Unions	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 and makes public via an appropriate channel such as the annual report, 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 and, to the extent possible, publishes this information and the results of the stress tests.</p>	<p>The disclosure requirements according to article 51 and further of the Directive (Report on solvency and financial condition) include publishing information about the risk profile of an undertaking but not the risk management policy. The content of the annual report is outside the remit of the Solvency II Directive.</p> <p>There is no legal basis in Solvency II for such a requirement.</p>
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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.</p>	The Explanatory Text is outside the scope of the consultation.

			<p>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>	<p>This is up to the undertaking to decide and justify.</p> <p>The stress tests mentioned in the Guidelines would be stress test that the undertaking decides on itself. Additionally, according to article 34 (4) of the Directive, undertakings can expect to be asked to run specific stress test by the NCA; these may however vary over time.</p> <p>Frequency and scope are subject to proportionality.</p>
401.	ROAM- Réunion des Organismes d'assurance mutuell	1.40	Le principe de proportionnalité doit s'appliquer.	With regard to what an undertaking needs to consider with regard to its risk management policy, the proportionality principle does not apply. But with regard to the way the undertaking actually

				manages its risk, yes of course.
403.	Urs Roth	1.40	<p>The ORSA-Process is part of the risk management process. I suggest to distinguish the risk management measures and the risks in this article in order to give clear interface to the ORSA-Process.</p> <p>""In accordance with Article 44 of Solvency II, national competent authorities should ensure that the undertaking establishes a risk management policy which at least:</p> <p>a) defines the risk categories and the methods to measure the risks;;</p> <p>b) outlines how the undertaking manages each relevant category and area of risks;;</p> <p>c) outlines the the different types of risk management measures, such as</p> <ol style="list-style-type: none"> 1. Avoidance of risks by risk tolerance limits 2. Transfer of risk by reinsurance 3. Reduction of risks by other risk mitigation measures 4. Compensation risk impacts by the undertaking's own capital <p>d) concerns all kind of risk impacts, such as</p> <ol style="list-style-type: none"> 1. Materially risks, affecting the solvency and liquidity situation 2. Legal risks, leading to violation of laws 3. Economic risks, affecting the growth of the undertaking <p>e) concerns all kind of risk events, such as</p> <ol style="list-style-type: none"> 1. Random events with short and long time impacts 2. Adverse evolutions with impact on the risk exposure and on the amount and availability of capital <p>The compensation of the risk impacts by the undertaking's own capital</p>	<p>What you propose for c) "different types of risk management measures" is already covered by b). Using the text in the numbers would practically amount to explaining what risk management means. EIOPA will not give this kind of explanation; undertakings are expected to know this anyway.</p> <p>Noted.</p>

			should refer on the Forward Looking Assessment of the undertaking's own risk, especially with a look on material risks affecting the solvency situation, long time impacts and adverse scenarios. ⁶⁶	
404.	Aon Ltd	1.41	The wording: « on other specific areas of risks both on its own initiative” may cause confusion as risks identified as material by the Risk Management Function should already be captured through the first sentence in this paragraph.	“Other” means other than potentially material risks.
406.	NFU - Nordic Financial Unions	1.41	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.	Employee representation in the AMSB is outside the scope of the Solvency II Directive.
407.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.41	There is no description of the general tasks of Internal Audit in the guideline such as performing audits covering all activities of the undertaking with a special focus on the system of governance, building a risk based audit plan, follow-up of recommendations and regular reporting to the AMSB about its activities. Adding a corresponding guideline in chapter VII.	It is a convention for Guidelines that they must not repeat what is covered by the Level 1 text and expected to be covered by the Level 2 text.
408	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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 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.	Materiality is to be defined by the undertaking and this definition can be challenged by the NCA.
409.	Aon Ltd	1.42	This type of responsibility creates a significant burden for the Risk Management Function at the parent level. There are also challenges associated with potential different regulatory expectations where entities within the groups reside in different countries.	Noted.
410.	CRO Forum and CFO	1.42	For the risk management policies, see our general comments regarding policies.	Noted.

	Forum			
411.	FEE	1.42	Please refer to our comment in paragraph 1.37.	Noted.
413.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.42	There is no description of the general tasks of Internal Audit in the guideline such as performing audits covering all activities of the undertaking with a special focus on the system of governance, building a risk based audit plan, follow-up of recommendations and regular reporting to the AMSB about its activities. Adding a corresponding guideline in chapter VII.	Noted: internal audit is not only a Solvency II concept. Not necessary.
415.	AMICE	1.43	Guideline 18 – Underwriting and reserving risk Proportionality needs to be applied especially with regards to the level of completeness required from the documentation. The request to include this sub-policy should not be mandatory during the interim phase.	Please refer to the resolution to comment 386.
416.	Aon Ltd	1.43	Subsections d& e are very prescriptive (not principles based). It also introduces new requirements in terms of investments that do not appear in the L1 or L 2 implementation measures.	Disagree. These subsections do not introduce new requirements. They just specify some very important supervisory expectations as regards insurance product design.
417.	Association of Financial Mutuials	1.43	The use of the list could result in only these items being considered – this is also the case for 1.43 where a more general comment would be helpful rather than identify two particular issues.	All lists in Guidelines are clearly identified as being non-comprehensive by “at least”. Even though EIOPA is aware that there still remains a risk that undertakings focus on what is explicitly mentioned – this is why

				EIOPA does not like to give specific examples where that risk of focusing on the examples is even higher. However, staying more general can be even more risky.
418.	BDO España	1.43	<p>We think that a 6th section, f), should be added:</p> <p>f) risk tolerance limits with respect to the undertaking's strategy.</p> <p>We explain:</p> <p>Whilst in the Operational Risk no tolerance can be admitted, irrespective of the Entity's Risk Profile and strategy, in the other risks, and in particular in the Insurance Risk (underwriting and reserving), the desirable mitigation levels will depend on the Entity's Risk Tolerance Limit, which will be in correlation to its strategy at that time.</p> <p>In that way, an Entity whose strategy is of strong business expansion, cannot expect at the same time a strong reduction of its Insurance Risk.</p> <p>On the contrary, if the Entity's strategy focuses on the rebalancing of its technical account (Combined Ratio) its Insurance Risk will have to be reduced necessarily.</p>	<p>EIOPA agrees that risk tolerance limits need to be set in line with the undertaking's risk strategy but does not consider it necessary to have this explicitly included here. This is already covered by Guideline 16 (para 1.40) on Risk Management Policy, under subsection d).</p>

419.	CRO Forum and CFO Forum	1.43	For the risk management policies, see our general comments regarding policies.	Please refer to the resolution to comment 256.
420.	Deloitte Touche Tohmatsu	1.43	This paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. Additionally, experience indicates that concentration of internal underwriting limits, management of investments across new business and existing business and alignment to reserving risk should be included. We propose that risk management policy is replaced with "formal risk management documentation".	Please refer to the resolution to comment 390. EIOPA included the management of the aggregation of risks in Guideline 16. The management of investments across existing and new business is covered by ALM und prudent person. EIOPA does not understand the comment about the alignment to reserving risk.
421.	DIMA (Dublin International Insurance & Management	1.43	Point (d) introduces a new level of prescription. Please see comment at 1.40.	Please refer to the resolution to comment 391.
422.	German Insurance Association (GDV)	1.43	As equally observed for the other Guidelines, is not clear the scope of Guideline 18, 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. Also is hardly possible for policies to be able to cover with all potential	Please refer to "Status of the Solvency II directive and the Delegated Acts" of the Feedback Statement.

			<p>designs of products. Processes, on the other hand, should be designed in a way that in the “new product process” risk mitigation is taken into account properly. As such, we would 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 surrender values in its products;</p> <p>d) how, in the process of designing 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 process of designing of a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.</p>	<p>This refers to product design in general. A policy by its nature cannot cover the specificities of all potential cases.</p> <p>Agree. EIOPA has changed the wording according to your suggestion.</p>
423.	Groupe Consultatif Actuariel Européen	1.43	<p>Clarity would be welcome as to how the management of underwriting and reserving risk is intended to interact with the provision of an opinion on the overall underwriting policy by the Actuarial Function.</p> <p>Point e) requires that the risk management policy covers the reinsurance in the design of the new insurance product/premium calculation whereas</p>	<p>It is up to the AMSB to decide how to react to the opinion given by the actuarial function. But if the AMSB endorses that opinion it would be expected to consider – with the help of the actuarial function if it so chooses - whether this should impact on other areas than the overall underwriting policy.</p> <p>The opinion of the actuarial function would be expected to be based</p>

			<p>paragraph 1.78 mentions that the Actuarial Function gives an opinion on the reinsurance. It would be convenient that the opinion provided by the Actuarial Function was aligned with the risk management policy (a link between both paragraphs could be established).</p> <p>Is this section intended to embrace reserving risk in the sense of the claims run-off of non-life liabilities?</p>	<p>on the actual reinsurance arrangements which in turn would be expected to reflect the risk management policy.</p> <p>Where applicable, yes.</p>
424.	Institut des Actuaire	1.43	Some of these responsibilities refer to actuarial work. We suggest these elements of the risk management function to be performed by the person mainly in charge of actuarial function, that person being in charge of actuarial function and of some elements of risk management function	According to the Solvency II Directive (article 44) the Risk Management Function is responsible for the risk management relating to underwriting and reserving risks. In the same manner, the Actuarial Functions has tasks in relation to the technical provisions, should express opinions on the overall underwriting policy and should contribute to an effective implementation of the risk management system. EIOPA sees no reason to add to this.
425.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.43	<p>We suggest more emphasis on monitoring of risk aggregation as follows :</p> <p>In accordance with Article 44 of Solvency II, national competent authorities should ensure that in its risk management policy, the</p>	Agree. EIOPA has included the aggregation of risks in Guideline 16 not 18 as

			<p>undertaking covers at least the following with regard to underwriting and reserving risk:</p> <p>a) the types and characteristics of the insurance business, for example, the type of insurance risk the undertaking is willing to accept;</p> <p>b) how the adequacy of premium income to cover expected claims and expenses is to be ensured;</p> <p>c) the identification and monitoring of the risks arising from the undertaking's insurance obligations, including embedded options and guaranteed surrender values in its products, and aggregations of risk;</p> <p>d) how, in the design 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 design of a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.</p>	<p>this is more generally applicable and does not just concern underwriting and reserving risk.</p>
426.	Insurance Association of Cyprus	1.43	<p>The requirements go into a level of detail that is excessive for the preparatory phase. We believe there should be less detail in the requirements, in line with the principle-based approach to regulation.</p> <p>It is not clear whether undertakings also need to comply with the relevant text in Level 1 and, especially draft Level 2.</p>	<p>Please refer to the resolution to comment 396.</p> <p>Please refer to "Status of the Solvency II Directive and the Delegated Acts" of the Feedback Statement.</p>
427.	Insurance Europe	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 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>Please refer to "Status of the Solvency II Directive and the Delegated Acts" of the Feedback Statement.</p> <p>Please refer to the resolution to comment 422.</p>

			<p>c) the identification of the risks arising from the undertaking's insurance obligations, including embedded options and guarantees surrender values in its products;</p> <p>d) how, in the process of designing 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 process of designing of a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.</p>	
429.	MGM Advantage	1.43	The use of the list could result in only these items being considered – this is also the case for 1.43© where a more general comment would be helpful rather than identify two particular issues.	Please refer to the resolution to comment 417.
430.	ROAM- Réunion des Organismes d'assurance mutuell	1.43	Pour une meilleure lisibilité, la liste énumérative devrait suivre l'ordre de l'article 44- 2 al. 2.	The order has to do with the fact that some items are linked with the prudent person principle. From the titles it should nevertheless be fairly easy to find a specific issue.
431.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.43	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 430.
433.	AMICE	1.44	<p>Guideline 19 – Operational risk</p> <p>Proportionality needs to be applied especially with regards to the level of completeness required from the documentation. The request to include this sub-policy should not be mandatory during the interim phase.</p>	Please refer to the resolution to comment 386.
434.	Aon Ltd	1.44	Proportionality does not appear to be taken into account in this section.	Proportionality does not

			<p>There is no reference to materiality and requires a high level of detail that will be extremely resource intensive.</p>	<p>affect what is required, it only affects how the requirements can be met. Therefore, since all undertakings are exposed to operational risk, proportionality cannot relieve any undertaking from identifying, measuring, monitoring, managing and reporting this risk. In order to ensure that this is done appropriately the operational risk management policy of the undertaking has to consider certain issues. The Guideline leaves the result of the consideration open. Please note that no material operational risks events having crystallised so far does not equal the undertaking is not exposed to material operational risk.</p> <p>The Guideline does not define a level of detail. That level is only high if such a level of detail is appropriate.</p>
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435.	ASSURALIA	1.44	<p>It is not clear why the risk tolerance limits with respect to the undertaking's key operational risk areas are required separately under point c), since these are already included in the risk management policy requirements under 1.40 d)?</p>	<p>It is sufficient to set them out once. This is a clarification since operational risk is not actively sought that there need to be risk tolerance limits for operational risk as well.</p>
436.	BDO España	1.44	<p>We refer to section c) of this paragraph 1.44:</p> <p>In the practice of the Risk Management of Insurance Companies, no tolerance can be admitted in relation to the Operational Risk, independently of the Entity's Risk Profile.</p> <p>All operational risk is a dysfunction in the operation of the Entity and, as such, there are no excuses not to mitigate it. Actually, to tolerate an operational risk would be a proof of indolent conduct in the management of the business.</p> <p>Therefore, unlike the other types of risk, the need of mitigation of the Operational Risk will not depend on the Entity's Risk Profile, Risk Appetite or Risk Tolerance Level.</p> <p>A different thing is that an operational risk whose mitigation is more expensive than the negative effect that it produces, is decided not to be mitigated. But this is just pure management logic.</p> <p>Now we refer to section a) of this paragraph 1.44:</p> <p>It only talks about "identification" and "mitigation". We think that it</p>	<p>EIOPA disagrees.</p> <p>Right, but the undertaking can also decide to accept operational risk that is less expensive than the potential consequences of the operational risk based on the probability of that risk crystallising.</p>

			<p>should also refer to the "evaluation". That is to say: Identification, evaluation, for the purpose of setting priorities, and mitigation.</p> <p>In short, we propose to delete section c) and rewrite section a) in the following terms:</p> <p>a) Identification of the operational risks it is or might be exposed to, evaluation for the purpose of prioritizing mitigation and the way to mitigate them;</p>	<p>EIOPA does not want to be that explicit but has changed the wording to include "assessment" before mitigation.</p>
437.	CRO Forum and CFO Forum	1.44	<p>For the risk management policies, see our general comments regarding policies.</p> <p>c) Risk types such as reputation risk, operational risk and strategic risk are inherently difficult to quantify and hence are not necessarily controlled separately with quantitative limits or trigger values. These risks are, however, implicitly managed by a strict application of the risk strategy and further addressed by other risk policies (such as the group-wide New Product Introduction Policies for financial instruments and insurance products), processes (such as the business planning process) and functions (such as the Compliance function) and controls (Internal Control System = ICS).</p>	<p>EIOPA does not disagree that it is possible to control these risks as you describe but still expects the maximum operational risk the undertaking considers to acceptable to be set out in the policy on operational risk management.</p>
438.	Deloitte Touche Tohmatsu	1.44	<p>This paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk management policy is replaced with "formal risk management documentation".</p>	<p>Please refer to the resolution to comment 390.</p>
439.	German Insurance Association	1.44	<p>Furthermore, the text in b) suggests that the risk management policy should contain a description of the companies' processes including the IT system. In our opinion a risk policy should not be the place to cover these</p>	<p>This is about the monitoring and managing of operational</p>

	(GDV)		<p>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>c) requires undertakings to document in the risk management policy "risk tolerance limits with respect to the undertaking's key operational risk areas." 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 difficulties to quantify operational risks (esp. rare events with a high impact) risk tolerance limits are unsuitable for operational risks. We suggest c) is deleted.</p>	<p>risks through processes, systems and activities.</p> <p>Please refer to the resolution to comment 437.</p>
440.	Groupe Consultatif Actuariel Européen	1.44	<p>The guideline should be principles-based. Technical details and further specifications should be mentioned elsewhere.</p>	<p>The Guideline is principle based; it only addresses which issues need to be considered.</p>
441.	Institut des Actuaire	1.44	<p>"c) risk tolerance limits with respect to the undertaking's key operational risk areas."</p> <p>It could be difficult to set operational risk tolerance limits.</p>	<p>Noted. However, the requirement is on a "best effort basis" and it seems worth making the effort as operational risks may have material consequences.</p>
442.	Insurance Association of Cyprus	1.44	<p>The requirements go into a level of detail that is excessive for the preparatory phase. We believe there should be less detail in the requirements, in line with the principle-based approach to regulation.</p> <p>It is not clear whether undertakings also need to comply with the relevant text in Level 1 and, especially draft Level 2.</p>	<p>Please refer to the resolution to comment 440.</p> <p>Please refer to "Status of the Solvency II Directive and the Delegated Acts" of the Feedback Statement.</p>
443.	Insurance Europe	1.44	<p>See comment above on the uncertainty of having to comply with draft Level 2 apart from this Guideline.</p>	<p>Please refer to "Status of the Solvency II</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 difficulties of quantifying operational risks (esp. rare events with a high impact) risk tolerance limits are unsuitable for qualitative elements.</p>	<p>Directive and the Delegated Acts" of the Feedback Statement.</p> <p>Please refer to "Purpose of the preparatory phase" of the Feedback Statement.</p> <p>Please refer to the resolution to comment 439.</p> <p>The Guidelines set out requirements on the policy on operational risk management not on operational risk management itself.</p> <p>Please refer to the resolution to comment 441. Whether something is difficult does not determine its suitability.</p> <p>However, it seems acceptable as a first stage to use a qualitative assessment.</p>
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			<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>	<p>The areas with the highest exposure to operational risk.</p> <p>EIOPA has changed “key” to “main” to clarify.</p> <p>Please refer to the resolution to comment 435. The clarification seems necessary: From stakeholders’ comments it can be inferred that without 1.40 d) those stakeholders would not consider applying risk tolerance limits to operational risk.</p>
445.	Munich Re	1.44	<p>c) Risk types such as reputation risk, operational risk and strategic risk are inherently difficult to quantify and hence are not controlled separately with quantitative limits or trigger values. These risks are, however, implicitly managed by a strict application of the risk strategy and further addressed by other risk policies (such as the group-wide New Product Introduction Policies for financial instruments and insurance products), processes (such as the business planning process) and functions (such as the Compliance function) and controls (Internal Control System = ICS).</p> <p>In general, specific technical details and further specifications should not be included to ensure a principle based approach.</p>	<p>Please refer to the resolution to comment 443.</p> <p>Please refer to the resolution to comments 440 and 399 and to “Principle based</p>

				approach and proportionality principle" of the Feedback Statement.
446.	ROAM- Réunion des Organismes d'assurance mutuell	1.44	Le principe de proportionnalité doit s'appliquer.	The Guidelines only sets out what needs to be considered in the policy on operational risk management, not what is required by way of operational risk management. That of course is subject to proportionality.
447.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.44	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 430.
449.	Urs Roth	1.44	<p>The operational risks are primarily avoidable risks. So risk tolerance limits are not so helpful to steer operational risks. I suggest to drop article c).</p> <p>""In accordance with Article 44 of Solvency II, national competent authorities should ensure that in the risk management policy, the undertaking covers at least the following with regard to operational risk:</p> <p>a) identification of the operational risks it is or might be exposed to and the way to mitigate them;;</p> <p>b) activities and internal processes in place in the undertaking, including the IT system supporting them.""</p>	Please refer to the resolution to comment 436.

450.	Aon Ltd	1.45	This section lacks consideration of proportionality or materiality. It also introduces specific requirements that are not in line with principle based regulation. It is also more onerous than prescribed in the L1 or L2	EIOPA has changed the wording and replaced "system" with "process" to clarify that the requirement is not as onerous as it seemed.
451.	Association of Financial Mutuels	1.45	A specific comment on proportionality would help here.	Please refer to the resolution to comment 433.
452.	CRO Forum and CFO Forum	1.45	For the risk management policies, see our general comments regarding policies.	Please refer to the resolution to comment 256.
453.	DIMA (Dublin International Insurance & Management	1.45	This is a new requirement which is not included at Level 1 or Level 2 and therefore is inappropriate to introduce within interim measures. Please see comment at 1.40.	The Guideline only provides clarification. Stakeholder comments show that this is necessary since stakeholder otherwise would fail to apply explicit requirements to operational risk. According to Article 44 (1) undertakings are required to have in place an effective risk management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous

				basis the risks, at individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.
454.	ECIROA	1.45	An automated and complex database for incident collecting and monitoring is disproportionate for small undertakings. Instead could such organisations use a declaratory table, filled by operational employees on an ongoing basis, supervised by the risk management function – as a “system for collecting and monitoring operational risk events”?	The Guideline does not require an automated or complex database. It is worded in such a way as to allow a proportionate approach. What you describe could very well be proportionate for some (not necessarily only small) undertakings.
455.	German Insurance Association (GDV)	1.45	Neither on Level 1 nor on draft Level 2 of the Solvency II regulation , operational data banks are required. We propose rephrasing the second sentence: “For this purpose, it should set up a system for collecting and monitoring operational risk events”.	In the Guideline operational data banks are not required either. The undertaking has to set up a proportionate system for collecting and monitoring operational risk events. Please refer also to the resolution to comment 450.
456.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.45	This draft guideline goes well beyond the requirements of Article 44 and does not in practice add anything to the preceding paragraph. Unless it can be justified, it may be deleted.	Please refer to the resolution to comments 453 and 455.
457.	Insurance Europe	1.45	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”.	Please refer to the resolution to comment 455.

458.	International Underwriting Association of London (IUA)	1.45	It does not appear appropriate to us to introduce such a level of prescription.	Please refer to the resolutions to comments 453 and 455.
460.	MGM Advantage	1.45	A specific comment on proportionality would help here.	Since as a general rule proportionality applies through all three Levels it is not necessary and could indeed be misleading to mention it specifically only in some instances.
461.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.45	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 430.
463.	Towarzystwo Ubezpieczeń Europa S.A.; Towarzystw	1.45	In our opinion, such requirements concerning reporting operational events via specially dedicated system is ineffective and costly (Guideline 19) It shouldn't be obligatory for each company. Especially small Insurance Companies which do not have the structure of branches should be relieved from this duty. Every operation is centralized so there is sufficient flow of information. In case of such entities reporting of operational events would be reduce to registration mostly of human error. It will be connected with incurring financial costs, but not providing relevant information or knowledge.	Please refer to the resolution to comment 450.
464.	Urs Roth	1.45	Collecting operational risk events is very expensive. Especially the events, which go back to insufficient internal processes or personal mistakes are difficult to identify. I suggest to constrain the the range of the events. ""In accordance with Article 44 of Solvency II, national competent authorities should ensure that the undertaking has processes to identify,	EIOPA disagrees: not managing operational risk is more expensive.

			<p>analyse and report on operational risk events. For this purpose, it should set up a system for collecting and monitoring operational risk events.</p> <p>At least the undertaking should collect operative risk events arising from violation of internal controls and guidelines or external events, including activities of external persons. ""</p>	
465.	Aon Ltd	1.46	This section lacks consideration of proportionality or materiality. It also introduces specific requirements that are not in line with principle based regulation. It is also more onerous than prescribed in the L1 or L2	Please refer to the resolutions to comments 450 and 460.
466.	CRO Forum and CFO Forum	1.46	<p>The word „stress“ should be deleted as it confuses risk scenarios with stress tests. This should read:</p> <p>“In accordance with Article 44 of Solvency II, national competent authorities should ensure that for the purposes of operational risk management, the undertaking develops and analyses an appropriate set of operational risk scenarios based on at least the following approaches:..”</p> <p>Moreover, for the risk management policies, see our general comments regarding policies.</p>	Agree. EIOPA has changed the wording according to your suggestion.
467.	DIMA (Dublin International Insurance & Management	1.46	The new requirement for stress tests should be deleted so that companies can determine the best way to monitor their operational risk.	The stress testing is not for monitoring operational risk but for assessing how much risk the undertaking could be exposed to. EIOPA considers this to be necessary for every undertaking.
468.	German Insurance Association (GDV)	1.46	As referred previously for the other Guidelines, Guideline 19 seems to go beyond article 44 of the Directive as these tasks are not clearly mentioned in article 44.	Of course they are not clearly mentioned. Guidelines specify but do not repeat the requirements of the Solvency II Directive.

			Besides, neither on Level 1 nor on Level 2 of the Solvency II regulation, operational risk stress scenarios are required. 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 would propose to delete this paragraph.	The Implementing Measures are expected to include a general requirement on stress tests and scenario analysis. EIOPA disagrees that stress tests are only appropriate in the context of the ORSA.
469.	Groupe Consultatif Actuariel Européen	1.46	It would be useful if EIOPA could suggest methods to stress test operational risk. Could these methods be tied back to the SII standard formula measure?	EIOPA has no intention to suggest methods as this is up to the undertakings to determine.
470.	Insurance Association of Cyprus	1.46	We do not agree with the requirement that undertakings develop and analyse operational risk stress scenarios. There is no such requirement in Level 1 or draft Level 2, and we believe it goes beyond the scope of article 44 of Solvency II. We thus propose its deletion.	Please refer to the resolution to comment 468.
471.	Insurance Europe	1.46	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. 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. 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.	Please refer to the resolution to comment 468. Awareness does not equal “training” and can be achieved with reasonable effort. The potential benefits of

				staff "keeping their eyes open" for what could turn into a major operational risk event can be considerable.
472.	International Underwriting Association of London (IUA)	1.46	It does not appear appropriate to us to introduce such a level of prescription.	Noted.
474.	Polish Chamber of Insurance	1.46	We believe it would be extremely difficult to take into account in stress scenarios such risks as legal or reputational risk. It would be worth creating a general base of operational risk scenarios (similar to Basel).	EIOPA disagrees. Noted.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.46	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. 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?	EIOPA disagrees. The Implementing Measures are expected to include a general requirement on stress tests and scenario analysis. Anyway, these tools are state-of-the-art in risk management and undertakings have to use appropriate methods for risk management. Scenario analyses are subject to proportionality yes, but the size of the undertaking and whether the undertaking can afford a big operational risk loss.

475.	RSA Insurance Group	1.46	This is overly prescriptive. Undertakings should decide for themselves the extent to which the Actuarial Function is involved with the Internal Model.	As long as they respect the distribution of tasks as set out in the Solvency II Directive.
476.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.46	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 461.
478.	Urs Roth	1.46	The operational risks are very different. So scenario analysis are not so helpful to estimate their impact. I suggest to drop this article.	EIOPA disagrees.
479.	Aon Ltd	1.47	The principle in this section needs to be clarified; the documentation of the effectiveness of all risk mitigation techniques appears to be a particularly onerous amount of effort. The assessment of the effectiveness may be a more reasonable requirement.	The assessment of the effectiveness s required as well. It is necessary that undertakings can demonstrate that they have analysed the effectiveness. EIOPA would expect that this is information that needs to be internally reported and for this purpose to be recorded anyway. Documenting is not the most onerous part of the exercise.
480.	Association of Financial Mutuals	1.47	A specific comment on proportionality would help here.	Please refer to the resolution to comment 108.
481.	CRO Forum and CFO Forum	1.47	For the risk management policies, see our general comments regarding policies.	Noted.

483.	German Insurance Association (GDV)	1.47	<p>We would propose to delete this Guideline as in case such analysis is necessary / appropriate should be part of the ORSA.</p> <p>Furthermore, in the explanatory text [paragraph 1.97] is stated 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. This requires further clarification and thought.</p>	<p>This distinction is meaningless. The ORSA is part of the undertaking’s risk management system, forming the connection to capital management. Whether something is risk management inside or outside the ORSA is irrelevant; the performance of the tasks is necessary and it does not matter whether they are performed as part of the ORSA or performed elsewhere and referred to in the ORSA.</p> <p>Please refer to the resolution to comment 471.</p>
484.	Groupe Consultatif Actuariel Européen	1.47	<p>This guideline requires among other requirements that the effectiveness of all risk mitigation techniques employed should be documented. This requirement should be clarified. The effectiveness of any risk mitigation related to catastrophic events can only be documented only after emergence of such events. Under normal circumstances this will not be the case. Therefore we like to suggest that documentation should relate only to the assessment process mentioned in the guideline and its results.</p>	<p>Documenting the effectiveness of risk mitigation techniques does not imply an ex-post consideration. This is about the documentation of the ex-ante assessment.</p>
485.	Institut des Actuaire	1.47	<p>Some of these responsibilities refer to actuarial work. We suggest these elements of the risk management function to be performed by the person mainly in charge of actuarial function, that person being in charge of</p>	<p>This suggestion is not in line with general Solvency II</p>

			actuarial function and of some elements of risk management function	requirements. However, the risk management function could include persons with an actuarial background.
486.	Insurance Association of Cyprus	1.47	We consider that this is excessive for the preparatory period and, in any case it is more related to the carrying out of ORSA. We propose deletion of this guideline.	With regard to how the preparatory period works please refer to "Purpose of the preparatory phase" of the Feedback Statement. Please refer to the resolution to comment 483.
487.	Insurance Europe	1.47	We propose that this Guideline is deleted as if such analysis is necessary / appropriate it should be part of the ORSA.	Please refer to the resolution to comment 483.
489.	MGM Advantage	1.47	A specific comment on proportionality would help here.	Please refer to the resolution to comment 108.
490.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.47	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 461.
492.	Aon Ltd	1.48	This section introduces some very specific requirements, which do not appear in L1 or L2. By including these requirements there is a risk that other relevant factors will be omitted as they are specified not on the list.	Please refer to the resolution to comment 461.
493.	ASSURALIA	1.48	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.	Sometimes there is an "overlap" between issues and a requirement could be

				introduced in different places. EIOPA prefers to keep point d) where it is.
494.	CRO Forum and CFO Forum	1.48	<p>“Where applicable, procedures for ensuring that unit-linked policyholders continue to receive benefits in line with aims and objectives originally communicated to them” – further clarification is sought as to the exact intention behind this requirement. We believe it is further covered by the terms of the contracts and the design of the product.</p> <p>Moreover, for the risk management policies, see our general comments regarding policies.</p>	This is about the fund being run by another insurer. The Guideline is designed to ensure that the first insurer has processes in place to check that the reinsurer manages their assets in line with the investment strategy communicated to the policyholder, so that the fund meets the policyholder’s expectations. EIOPA therefore considers it appropriate to retain sub-paragraph (e) as part of this Guideline.
495.	DIMA (Dublin International Insurance & Management)	1.48	Point (e) appears to be a new requirement. Please see comment at 1.40.	It is a specification of Article 44 as are the other points.
496.	German Insurance Association (GDV)	1.48	<p>We would also propose to rephrase b) in a way that “counterparties for reinsurance and other risk mitigation” are treated equally, e.g. b) principles for the selection of reinsurance counterparties for reinsurance and other risk mitigation as well as and procedures for assessing and monitoring the creditworthiness and diversification of these reinsurance counterparties.</p> <p>We would welcome clarification on why unit-linked policyholders are</p>	Agree. EIOPA has changed the wording according to your suggestion.

			explicitly mentioned here. 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.	Please refer to the resolution to comment 494.
497.	Groupe Consultatif Actuariel Européen	1.48	<p>As with above, a less prescriptive view may be more beneficial to users. Furthermore, this list of factors EIOPA has considered that national competent authorities should ensure are covered is already in existence in the Level 2 advice document and, as such, appears to be unnecessary duplication.</p> <p>In point a) there are other considerations, such as price, which an entity should consider when defining risk limits for its reinsurance programme.</p> <p>Point "e)" seems very specific and is not compatible with the business model of unit-linked policies. E.g. there are policyholders who themselves select the investments according to their objectives. It is furthermore not an originary subject of Governance. Subitem e) should therefore be deleted.</p>	<p>With the publication of the Implementing Measures the advice document for the Implementing Measures will lose all relevance.</p> <p>Price considerations are embedded in "appropriate".</p> <p>Point e) states "where applicable".</p>
498.	Institut des Actuaire	1.48	Some of these responsibilities refer to actuarial work. We suggest these elements of the risk management function to be performed by the person mainly in charge of actuarial function, that person being in charge of actuarial function and of some elements of risk management function	Please refer to the resolution to comment 485.
499.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.48	While we have no disagreement with it, the intent of sub-paragraph (e) of Guideline 21 is not entirely clear. The importance of adherence to originally communicated aims for unit-linked funds is not limited to use of reinsurance or risk-mitigation (see Guideline 27). If it is retained, the intent of the sub-paragraph to the guideline might usefully be clarified in the explanatory text.	Please refer to the resolution to comment 494.
500.	Insurance	1.48	The requirements go into a level of detail that is excessive for the	Please refer to the

	Association of Cyprus		<p>preparatory phase. We believe there should be less detail in the requirements, in line with the principle-based approach to regulation.</p> <p>It is not clear whether undertakings also need to comply with the relevant text in Level 1 and, especially draft Level 2.</p>	<p>resolution to comment 440.</p> <p>Please refer to "Status of the Solvency II Directive and the Delegated Acts" of the Feedback Statement.</p>
501.	Insurance Europe	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> <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 reinsurance counterparties for reinsurance and other risk mitigation as well as and procedures for assessing and monitoring the creditworthiness and diversification of these reinsurance 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>	<p>Please refer to the resolution to comment Status of the Solvency II Directive and the Delegated Acts".</p> <p>Please see resolution to comment 496.</p> <p>Please refer to the resolution to comment 493.</p> <p>Please refer to the resolution to comment 494.</p>

503.	MGM Advantage	1.48	We agree that it is important to have proper processes in place for the treatment of unit-linked policyholders but find it difficult to see why sub-paragraph (e) is included here in this paragraph which is about risk mitigation techniques. We suggest it is moved.	Please refer to the resolution to comment 494.
504.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.48	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 430.
506.	AMICE	1.49	Guideline 22 – Asset-Liability Management Proportionality needs to be applied especially with regards to the level of completeness required from the documentation. The request to include this sub-policy should not be mandatory during the interim phase.	Please refer to the resolution to comment 386.
507.	Aon Ltd	1.49	This section introduces some very specific requirements, which do not appear in L1 or L2. By including these requirements there is a risk that other relevant factors will be omitted as they are specified not on the list. The language in this section needs to be clarified.	Of course they do not appear: Guidelines specify Solvency II Directive and draft Implementing Measures requirements but do not repeat them. The list is very clearly not comprehensive (“at least”).
508.	ASSURALIA	1.49	With regard to all related requirements for stress testing (cf. point c; see also 1.40) it is proposed to centralise these under a separate guideline for stress testing. Under this guideline it is proposed that undertakings should define an appropriate policy on the conduct of regular and ad hoc stress tests in line with their risk management.	Sometimes there is an “overlap” between issues and a requirement could be introduced in different places. EIOPA prefers to keep point c) where it is.
509.	BDO España	1.49	We think that section c) should be reformulated in the following terms:	EIOPA agrees with the

			<p>c) a description of deliberate mismatches permitted, in line with the risk tolerance limits with respect to the undertaking's strategy, and the content and frequency of stress-tests to be conducted and monitored; and</p> <p>We explain:</p> <p>In the risks different to the Operational Risk, the ALM Risk included, the desirable mitigation levels will depend on the Entity's Risk Tolerance Limit, which will be in correlation to its strategy at that time.</p>	<p>explanation given but does not want to stress again that the level of risk accepted for the different risk categories has to be in line with the risk tolerance limits which in turn have to reflect the undertaking's risk strategy.</p>
510.	CRO Forum and CFO Forum	1.49	<p>There is duplication in c) and d). Suggest that reference to stress tests is deleted in c) and this therefore only requires ' a description of deliberate mismatches permitted'.</p> <p>Moreover, for the risk management policies, see our general comments regarding policies.</p>	<p>Agree. EIOPA has changed the wording according to your suggestion.</p>
511.	Danish Insurance Association (DIA)	1.49	<p>Nature, scale and complexity is of great importance when defining those outsourcing activities covered by the guidelines. DIA suggest, that only outsourcing of essential activities are covered by the outsourcing definition. Further reference is made to Guideline 14.</p>	<p>Outsourcing is defined in the Directive and EIOPA has to respect that definition which does not limit outsourcing to essential activities.</p>
512.	Deloitte Touche Tohmatsu	1.49	<p>The term deliberate in sub-paragraph c. is unclear. We propose replacing deliberate with "known".</p> <p>Additionally, this paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk management policy is replaced with "formal risk management documentation".</p>	<p>EIOPA disagrees. Deliberate means that the mismatch is known and the undertaking has decided not to avoid it.</p> <p>Please refer to the</p>

				resolution to comment 438.
513.	ECIROA	1.49	a) The application of the asset –liability management in currency: is it by main currency zone or by local currency?	Could be either as long as the choice is proportionate.
514.	Insurance Association of Cyprus	1.49	The requirements go into a level of detail that is excessive for the preparatory phase. We believe there should be less detail in the requirements, in line with the principle-based approach to regulation. It is not clear whether undertakings also need to comply with the relevant text in Level 1 and, especially draft Level 2.	Please refer to the resolution to comment 396. Please refer to “Status of the Solvency II Directive and the Delegated Acts” of the Feedback Statement.
515.	Insurance Europe	1.49	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. There is a duplication in c) and d). We suggest that the reference to stress test is deleted in c).	Please refer to “Status of the Solvency II Directive and the Delegated Acts” and “Purpose of the preparatory phase” of the Feedback Statement. Please refer to the resolution to comment 510.
517.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.49	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 430.
	Powszechny Zakład	1.49	On (c) and (d), in our opinion the guideline on minimum frequency of running stress tests and minimum number/set of stress tests scenarios	Article 44 of the Solvency II Directive

	Ubezpieczeń Spółka Akcyjna		<p>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>	<p>requires undertakings to have an effective risk management system. This requires undertaking to make use of state-of-the-art tools such as stress testing.</p> <p>EIOPA considers that is up to the undertaking to define the frequency and scope of the stress tests, considering its risk profile.</p>
519.	AMICE	1.50	<p>Guideline 23 – Investment risk</p> <p>Proportionality needs to be applied especially with regards the level of completeness required from the documentation. The request to include this sub-policy should not be mandatory during the interim phase.</p>	<p>Proportionality does not apply to documentation in that way. All undertakings need to have sufficient documentation with adequate quality and level of detail. Of course, for smaller/ less complex undertakings, the level of detail required will be less that for bigger/ high complex undertakings.</p>
520.	Aon Ltd	1.50	<p>New specific requirements which are not principles based. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.</p>	<p>The Guideline specifies the articles 44 and 132 of the Solvency II</p>

				Directive.
521.	ASSURALIA	1.50	<p>It is proposed to use the title 'investment management' which is a better reflection of the guideline 1.50.</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>Agree. EIOPA has changed the wording according to your suggestion.</p> <p>d) is not only about liquidity (counterparty risk can also play a role here).</p>
522.	BDO España	1.50	<p>We think that section b) should be reformulated in the following terms:</p> <p>b) the internal quantitative limits on assets and exposures, including off-balance sheet exposures, that are to be established to help the undertaking achieve its desired level of security, quality, liquidity, profitability and availability for the portfolio, in line with the risk tolerance limits with respect to the undertaking's strategy;</p> <p>We explain:</p> <p>In the risks different to the Operational Risk, the Investments Risk included, the desirable mitigation levels will depend on the Entity's Risk Tolerance Limit, which will be in correlation to its strategy at that time.</p>	<p>Please refer to the resolution to comment 509.</p>
523.	CRO Forum and CFO Forum	1.50	<p>We suggest to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Remove the requirement (c) for the policy to cover 'consideration of the financial market environment' as this is too vague. <input type="checkbox"/> Remove 'highly' from (e), so this says 'the link between market risk and other risks in adverse scenarios'. 	<p>EIOPA disagrees.</p> <p>Agree. EIOPA has changed the wording according to your suggestion.</p>

			<p>Also, (g) is not clear – need to clarify whether the “performance” to be monitored refers to how well the policy has performed or whether it refers to how well the assets giving rise to the investment risk have performed.</p> <p>Likewise in (g), it is not clear whether the requirement to “review the policy” requires reviewing the entire policy document or is intended to refer to reviewing the level of security, quality, liquidity, profitability and availability that the undertaking is aiming for.</p> <p>“.</p> <p>(h) is too subjective - “best interest” should be replaced with the “interest” since it is not always possible to prove why selecting a high yielding asset with higher risk or a low yielding asset with low risk is in the “best” interests of the policyholder although it should be possible to prove that it is in the interest of the policyholder. This provision could be dropped as it is already properly covered by Art. 132 of the Directive, under the ‘Prudent Person Principle’.</p> <p>Moreover, for the risk management policies, see our general comments regarding policies.</p>	<p>The latter but if the investments are chosen according to the policy their performance reflects on the performance of the policy.</p> <p>The Solvency II Directive requires a regular review of the written policies. That means a review of the whole policy.</p> <p>This is not a repetition of Article 132, the Guideline clarifies that the undertaking ensures compliance with the requirement in the appropriate drafting of its policy.</p>
524.	Deloitte Touche Tohmatsu	1.50	<p>The characteristics of security, quality, liquidity, profitability and availability in paragraph a. and b. are open to interpretation. We propose qualifying these with “criteria such as”.</p> <p>Additionally, this paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk</p>	<p>EIOPA does not see how that suggestion would help and anyway these are the terms that article 132 of the Solvency II Directive uses.</p> <p>Please refer to the resolution to comment</p>

			management policy is replaced with "formal risk management documentation".	438.
525.	DIMA (Dublin International Insurance & Management)	1.50	The meaning of "availability" of assets is unclear in point (a) and is not a requirement of Article 132. Please see comment at 1.40.	You are mistaken here, see Article 132(2), second subparagraph, last sentence.
527.	German Insurance Association (GDV)	1.50	.Regarding the explanatory text, paragraph 1.111 refers 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.	The Explanatory Text is outside the scope of the consultation.
528.	Groupe Consultatif Actuariel Européen	1.50	<p>With reference to point a) how does EIOPA define availability of assets? Is this a reference to marketability? Further to this, companies are likely to have different investment policies for different business funds and so the assessment should take place at the appropriate fund level.</p> <p>With reference to point c) the financial market environment, is the entity expected to make a specific statement on the current financial climate within their risk management policy? This is likely to be highly subjective.</p> <p>Point c) is also relevant for liquidity risk</p>	<p>Please refer to the resolution to comment 525.</p> <p>The undertaking needs to make the connection between the undertaking's investment management policy and its evaluation of the financial market environment. The issue is consistency, not being right or wrong, so subjectivity is no problem.</p> <p>Liquidity risk needs to be considered in the</p>

				level of liquidity the undertaking is aiming for under point a).
529.	Insurance Association of Cyprus	1.50	<p>The requirements go into a level of detail that is excessive for the preparatory phase. We believe there should be less detail in the requirements, in line with the principle-based approach to regulation.</p> <p>It is not clear whether undertakings also need to comply with the relevant text in Level 1 and, especially draft Level 2.</p> <p>Under 1.8 (introduction), EIOPA states that «this does not imply that undertakings' investment portfolios already have to be changed... » We consider it important that this be stated in the guidelines and not (only) in the introduction.</p>	<p>Please refer to the resolution to comment 386.</p> <p>Please refer to "Status of the Solvency II Directive and the Delegated Acts" of the Feedback Statement.</p> <p>Guidelines can only set out what the addressee should do or should not do, they cannot be explanatory in character.</p>
530.	Insurance Europe	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>Please refer to "Status of the Solvency II Directive and the Delegated Acts" and "Purpose of the preparatory phase" of the Feedback Statement.</p> <p>The Guideline implies no such thing of course it is not only possible but can be necessary to consider the liabilities but it is ALM then. The connection with</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 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>liabilities is through article 132 (2) third subparagraph of the Solvency II Directive.</p> <p>Please refer to the resolution to comment 529 and "prudent person principle" of the Feedback Statement.</p> <p>Disagree. Although liquidity plays a role in pledging or lending of assets, this is not the purpose of this requirement.</p> <p>Please refer to the resolution to comment 521.</p> <p>Guideline 23 point h) does not introduce the requirement to invest in the best interest of policyholders and beneficiaries; it states that how the undertaking proposes to meet this requirement should be addressed in the investment risk management policy.</p>
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			<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>	<p>This presupposes that the best interest requirement exists.</p> <p>The Explanatory Text is outside the scope of the consultation</p>
531	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.50	<p>On (e), as we understand this point and based on explanatory text to the guideline („1.111.(...) For such purpose an appropriate number of stress tests are carried out on a regular basis.”) in our opinion the guideline on minimum frequency of running stress tests and minimum number/set of stress tests scenarios should be provided.</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>	<p>EIOPA disagrees. The Implementing Measures are expected to include a general requirement on stress tests and scenario analysis. Anyway, these tools are state-of-the-art in risk management and undertakings have to use appropriate methods for risk management.</p> <p>Scenario analyses are subject to proportionality yes, but the size of the undertaking and whether the undertaking can afford a big operational risk loss.</p>
532.	ROAM-	1.50	Ajouter au c) le mot “Relevant” avant « financial market environment »	The undertaking should

	Réunion des Organismes d'assurance mutuell			consider the financial market environment in general. What will be taken into account is however only what the undertaking considers to be relevant.
533.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.50	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 461.
535.	AMICE	1.51	Guideline 24 – Liquidity risk Proportionality needs to be applied especially with regards the level of completeness required from the documentation. The request to include this sub-policy should not be mandatory during the interim phase.	Please refer to the resolution to comment 386.
536.	Aon Ltd	1.51	New specific requirements which are not principles based. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.	Please refer to the resolution to comment 396.
537.	ASSURALIA	1.51	It is proposed to use the title 'liquidity management' which is a better reflection of the guideline 1.51.	Agree. EIOPA has changed the wording according to your suggestion.
538.	BDO España	1.51	We think that a 6th section , f), should be added: f) risk tolerance limits with respect to the undertaking's strategy. We explain:	Please refer to the resolution to comment 509.

			In the risks different to the Operational Risk, the Liquidity Risk included, the desirable mitigation levels will depend on the Entity's Risk Tolerance Limit, which will be in correlation to its strategy at that time.	
539.	CRO Forum and CFO Forum	1.51	<p>Sub (d) should only apply to financing tools when they are being set up. We suggest to Add wording at the start „when introducing financing tools”</p> <p>We would also add the following points : « consideration of the effect of a worst case scenario on the liquidity buffer » and « definition of a contingency liquidity and funding plan”</p> <p>Moreover, for the risk management policies, see our general comments regarding policies.</p>	<p>Disagree. This is about the policy and not the actual setting up of the financial tools.</p> <p>Disagree. The aspect is already included in the stress tests in general in the risk management policy and in the liquidity buffer respectively.</p> <p>Please refer to the resolution to comment 256.</p>
540.	Deloitte Touche Tohmatsu	1.51	<p>In order to be consistent with the requirements of 1.56 and 1.57, we propose the addition of point f.: “consideration for the identification and management of the liquidity constraints on unit-linked contracts.”</p> <p>Additionally, this paragraph suggests extensive content to be provided within the policy. This will make the policy long and complicated. We propose that policy be replaced with documentation. We propose that risk management policy is replaced with “formal risk management documentation”.</p>	<p>EIOPA considers this to be covered by point b) already as it is part of the undertakings liquidity buffer.</p> <p>Please refer to the resolution to comment 438.</p>
541.	German Insurance	1.51	In the explanatory text (paragraph 1.118) the obligation to set up “clear agreements governing the usage of excess funds, supervision of each	Noted (ET).

	Association (GDV)		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.	
542.	Insurance Association of Cyprus	1.51	<p>The requirements go into a level of detail that is excessive for the preparatory phase. We believe there should be less detail in the requirements, in line with the principle-based approach to regulation.</p> <p>It is not clear whether undertakings also need to comply with the relevant text in Level 1 and, especially draft Level 2.</p>	<p>Please refer to resolution to comment 396.</p> <p>Please refer to "Status of the Solvency II directive and Implementing Measures" of the Feedback Statement.</p>
543.	Insurance Europe	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>	<p>Please refer to the resolution to comment 537.</p> <p>Noted (ET).</p>
545.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.51	It eases the reading of the guidelines, if the guideline follow the same order as in Art. 44 no. 2 of the directive.	Please refer to the resolution to comment 461.
547.	ASSURALIA	Chapter IV General Comments		
548.	CRO Forum	Chapter IV	Having to introduce additional constraints on top of the existing regime	Please refer to "Prudent

	and CFO Forum	General Comments	for managing investments seems unpractical, especially because both regimes (Solvency II and Solvency I) can lead to different decisions in some cases. We would prefer that the requirements applies to firm only on ad-hoc basis requiring firm to review their portfolio on a regular basis and assess the impact of Solvency II on their composition and on the level of associated risk.	Person Principle" in the Feedback Statement.
549.	German Insurance Association (GDV)	Chapter IV General Comments	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.	Article 44 clearly and correctly links the prudent person principle to the risk management system since the prudent person principle is about investment risk management.
550.	Insurance Association of Cyprus	Chapter IV General Comments	We do not support any requirements in the guidelines that involve Solvency II pillar 1 elements. This would be too burdensome and not appropriate for the preparatory stage. Solvency II pillar 1 should only apply when Solvency II is introduced in 2016.	The prudent person principle is not a pillar I element but a qualitative requirement on investment risk management.
551.	Insurance Europe	Chapter IV General Comments	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.	Please refer to the resolution to comment 549.
552.	Aon Ltd	1.52	The requirements for key risk indicators would be more appropriate as a general requirement over any material risks. As currently defined, this sections focuses too specifically on a particular risk category. Also it is up to the company to define within it's risk appetite framework which are the relevant metrics; imposing additional key risk indicators over and above these would not be proportionate or principles based.	While EIOPA considers key risk indicators to be a useful tool it does not intend to ask that all undertakings without exception should introduce key risk indicator for all risk

				categories.
553.	ASSURALIA	1.52	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 to move this requirement to a general guideline on key risk indicators.	Please refer to the resolution to comment 552.
554.	CRO Forum and CFO Forum	1.52	We would like to suggest the following wording: „In accordance with Article 132 of Solvency II, national competent authorities should ensure that the undertaking develops its own set of key risk indicators for the purpose of investment risk management. These should be appropriate to its risk management policy and business strategy.”	EIOPA has changed the wording from “adapted to” to “in line with”.
555.	DIMA (Dublin International Insurance & Management)	1.52	This is a new requirement and therefore is inappropriate to introduce within interim measures. Please see comment at 1.40.	It is not new, it is a specification of the prudent person principle.
556.	German Insurance Association (GDV)	1.52	1.52 also 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 the coming European rules to regulate credit rating agencies (CRA III) to reduce the 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	(This is about 1.53 not 1.52) This is a specification of the requirement in Article 132(2) and clarifies that proper monitoring and controlling cannot be completely reliant on external parties that

			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.”	have been proven to be less than reliable in the past. It is expected that Level 2 will also address the issue and will appropriately take into account the need for cross-sectoral consistency.
557.	Insurance Europe	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>	<p>Please refer to the resolution to comment 556.</p> <p>Please refer to the resolution to comment 552.</p>
558.	International Underwriting Association of London (IUA)	1.52	It does not appear appropriate to us to introduce such a level of prescription.	Noted.

560.	ROAM- Réunion des Organismes d'assurance mutuell	1.52	<p>"own set of key risk indicators" : le principe de proportionnalité doit s'appliquer.</p> <p>Il ne faut pas aboutir à exiger des indicateurs de risques propres à l'entreprise trop nombreux ou trop spécifiques.</p> <p>Cette disposition va au-delà de la directive (cf. art. 132).</p>	<p>Obviously, the scope of the set and how detailed the key risk indicators should be is dependent on what is appropriate to the individual portfolio.</p> <p>Please refer to the resolutions to comments 555 and 556.</p>
562.	Aon Ltd	1.53	<p>The wording needs to be clarified. Greater clarity on additional reliable sources of information needs to be provided. This may create a disproportionate burden for less complex organisations.</p>	<p>Undertakings cannot solely rely on any external source. They should use and develop their own views. EIOPA is aware that this will be more difficult to comply with for some undertakings.</p>
563.	Association of Financial Mutuals	1.53	<p>We have some concerns on the ability of smaller firms (many of which in the UK are our members) being able to repeat the work of rating agencies on all of the investments held by the firm. We believe that EIOPA are not asking firms to repeat all the work and carry out their own assessment of the risk at the depth that would be carried out by a rating agency. Therefore, we would suggest that this paragraph should be rephrased to state</p> <p>Rating agency results should be supplemented by general market information. The AMSB should not automatically follow ratings from rating agencies.</p> <p>This, we feel gives the result that EIOPA is seeking without requiring all firms to create the rating agency expertise in-house.</p>	<p>The Guideline does not imply that all undertakings should have rating agency expertise in-house. However, the approach should be proportionate.</p>
564.	ECIROA	1.53	<p>How could "does not solely depend on the information provided by (...)"</p>	<p>The approach taken</p>

			<p>be understood for small undertakings? Setting up an “own” assessment methodology for the credit / investment risk is proportionate for such organisations. If a small undertaking implements an investment committee, consisting of persons with sufficient financial skills and knowledge, who challenge the information provided by third parties; would this system be considered as compliant with EIOPA’s requirement on this topic?</p>	<p>should be proportionate. What you suggest may be a proportionate approach for some undertakings (not necessarily for all small undertakings and not limited to small undertakings).</p>
565.	German Insurance Association (GDV)	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>	<p>According to the second sentence of paragraph 1. 53 it is clearly not sufficient. EIOPA also does not believe that an undertaking should determine how much market risk is acceptable without consideration or the other risks that affect its solvency position.</p> <p>The Guideline does not imply that a calculation of the solvency position is necessary. When making investment decisions undertakings have to consider already that market risk will result in capital requirements under Solvency II. For this they cannot automatically rely on the capital charge under Solvency II being</p>

				correct.
566.	Groupe Consultatif Actuariel Européen	1.53	The principle of proportionality is important here. It seems disproportionate that an undertaking should be expected to independently research all assets that it plans to acquire and it should be reasonable for the undertaking to rely on information provided by financial institutions, asset managers and rating agencies in many cases. It should only need to conduct its own independent review for more material asset holdings.	The Guideline allows for proportionality.
567.	Insurance Association of Cyprus	1.53	We do not agree that an undertaking should not be allowed to solely depend on the information provided by financial institutions, asset managers and rating agencies. We believe this goes beyond the scope of article 132 of Solvency II, and introduces excessive demands that especially small undertakings would find extremely difficult to meet.	Please refer to the resolution to comment 564.
568.	Insurance Europe	1.53	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. 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. 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.	Please refer to the resolution to comment 565.
570.	MGM Advantage	1.53	We have some concerns on the ability of smaller firms (such as ourselves) being able to repeat the work of rating agencies on all of the investments held by the firm. We believe that NCAs should not ask firms to repeat all the work and carry out their own assessment of the risk at the depth that would be carried out by a rating agency. Therefore, we would suggest that this paragraph should be rephrased to state "Rating agency results should be supplemented by general market information. The AMSB should not automatically follow ratings from	Please refer to the resolution to comment 563.

			rating agencies.” This would give the result that EIOPA is seeking without requiring all firms to create the rating agency expertise in-house.	
571.	ROAM- Réunion des Organismes d’assurance mutuell	1.53	Conformément à l’art. 132 de la directive (« de manière adéquate »), il convient de laisser à chaque entreprise la possibilité de se baser sur les informations et analyses solides établies par des organismes extérieurs. Ne pas exiger de chaque entreprise qu’elle dispose d’un système d’analyse propre et ait un département dédié.	Please refer to the resolution to comments 556 and 563.
573.	AMICE	1.54	Guideline 26 – Assessment of non-routine investment activities The guideline 26 creates a new obligation to assess “non-routine investment activities” in addition to the investment policy defined by each undertaking (in accordance with Article 44 of the Directive). This request goes beyond the Level 1 text.	EIOPA disagrees. It is a natural consequence of article 132 (2) which states that the undertaking should only invest in assets and instruments whose risks they can identify, measure, monitor, manage, control and report on.
574.	Aon Ltd	1.54	Please define “non-routine” in the guidance. This is a very specific requirement for investments which is disproportionate for small or less complex insurers.	“Non-routine” is explained in the Explanatory Text. If an undertakings does not want to bother with the requirement it can just keep its hands off non-routine investments.
575.	Deloitte Touche Tohmatsu	1.54	The scope of non-routine investment activities is not clear. Is non-routine relative to the entire market on average or relative to the undertaking? We request a definition of non-routine investment activities.	Please refer to the resolution to comment 577.
576.	FEE	1.54	We question if “complex products” should be dealt with in Paragraph 1.54 (or separately immediately thereafter) instead of as a reference in	After consideration EIOPA prefers to leave

			Paragraph 1.58.	"complex products" where they are.
577.	German Insurance Association (GDV)	1.54	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 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 (see 1.52).	EIOPA has changed the wording to "policyholders".
578.	Insurance Europe	1.54	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 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.	Please refer to the resolution to comment 577.
580.	ROAM- Réunion des Organismes d'assurance mutuell	1.54	La guideline 26 crée une nouvelle obligation et une nouvelle notion « non-routine investment activities », en plus de la politique d'investissement définie par chaque entreprise (conformément à l'art 44 de la directive). Cette disposition va au-delà de la directive.	Please refer to the resolution to comment 573.
582.	Aon Ltd	1.55	These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.	This is a specification of the requirements that follow from article 132, i.e. are necessary to ensure that an undertaking can comply with the prudent person principle.
583.	Deloitte Touche Tohmatsu	1.55	Is the scope of this requirement solely for non-routine investment activities? If so, please refer to comment for paragraph 1.54.	The requirement here is to specifically point out that the reporting to the AMSB is important in connection with non-routine investment activities. This is why it

				is part of the same Guidelines. However, the risk management function has to report to the AMSB on all potentially material risks (see Guideline 7). Please refer to the resolution to comment 577.
585.	NFU - Nordic Financial Unions	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>	Please refer to the resolution to comment 406.
586.	Aon Ltd	1.56	These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.	Please refer to the resolution to comment 582.
587.	ASSURALIA	1.56	It is proposed to delete the requirements under guideline 27 since these clearly relate to customer protection instead of prudential regulation and, as such, are being covered by conduct of business regulation.	The Guideline is included as the undertaking carries the investment risk to the extent that the undertaking does not meet the requirements in the Guideline and fails to be able to satisfy reasonable policyholder expectations.

588.	CRO Forum and CFO Forum	1.56	As above in 1.50, we suggest that "best interest" should be replaced with the "interest" since it is not always possible to prove investments are in the "best" interests of the policyholder. Furthermore, the investment is decided by the policyholder in many cases.	This is not in line with the Directive and therefore not possible.
589.	German Insurance Association (GDV)	1.56	It should be clarified 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.	Please refer to the resolution to comment 577.
590.	Groupe Consultatif Actuariel Européen	1.56	In the case of the Unit Linked business, the policyholder decides for himself the investment strategy. Some countries have already introduced some rules (inspired by MIFID). We have to wait for European regulation in this context, specifically for the insurance activities. Overall we are unsure if this topic should form a component of governance – perhaps Guideline 27 should contain only the requirement of 1.57	Policyholders choose from the UL that are proposed. The proposed UL should be selected in their best interest considering they are not experts.
591.	Insurance Europe	1.56	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. 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.	Please refer to the resolution to comments 587 and 589.
592.	Munich Re	1.56	Please note, that policyholders, in accordance to the policy objectives, may select the investments themselves. This Guideline should therefore be clarified or deleted.	Please refer to the resolution to comment 590.
593.	Aon Ltd	1.57	These appear to be new requirements. These guidelines should not	Please refer to the

			introduce additional requirements as compared to Level 1 and draft Level 2 text.	resolution to comment 582.
595.	Insurance Europe	1.57	See 1.56	Noted.
596.	Aon Ltd	1.58	These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.	Unit-linked and index-linked contracts are within the scope of Article 132 (3) of the Solvency II Directive. They are selected and taken out by policy holders but undertakings should ensure that asset offered to back the benefits of such contracts are suitable to policyholders best interests.
597.	FEE	1.58	Please refer to our comment in paragraph 1.54.	Please refer to the resolution to comment 576.
598.	German Insurance Association (GDV)	1.58	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.	Since Guidelines do not repeat the Level 1 text, the requirements set out in the Guidelines are generally not to be found explicitly in the Solvency II Directive but are a specification of the outcome required by the Directive. According to Article 132 of the Solvency II Directive, investments

				and assets not admitted to trading on a regulated financial market are to be kept at prudent levels. In order to ensure that the undertaking does not exceed these prudent levels and as there is not the same amount of information available as on publically traded investments and assets, undertakings have to take particular care, i. e. have specific procedures, with regard to these assets.
599.	Groupe Consultatif Actuariel Européen	1.58	This guideline mentions the need for procedures in relation to certain types of investments (as outlined in the guideline). It is unclear as to what exactly these procedures refer to and so clarification would be welcome.	It is for the undertaking to define procedures which ensure that the undertaking does not exceed prudent levels with regard to these types of investments.
600.	Insurance Association of Cyprus	1.58	In paragraph 1.131 of the explanatory text, it is imperatively stated that "where mark to model valuation is applied, the risk management function is responsible for model sign-off and review, independent price verification and stress testing...". Firstly, we do not agree with the use of imperative language in a text the role of which is explicitly said to be explanatory. Secondly, we disagree with the content of this paragraph, as it is not appropriate to require the risk management function to perform these tasks in relation to a mark to model valuation. Such valuation is often a highly technical accounting exercise and the risk management function	The Explanatory Text is outside the scope of the consultation.

			<p>may not possess the specific technical expertise to assess/review/verify it. We thus propose to delete or amend paragraph 1.131 accordingly.</p>	
601.	Insurance Europe	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>	<p>Please refer to the resolution to comment 598.</p> <p>Definitions are overrated. That a term is not defined does not mean that it is difficult to apply in a harmonised way.</p>
602.	AMICE	1.59	<p>Guideline 28 - Assets not admitted for trading on a regulated financial market</p> <p>The guideline 28 assimilates admitted assets on financial markets to assets not admitted for trading on a regulated financial market if the undertaking does not operate regular movements on these assets. This goes beyond the scope of the guidelines and leads to confusion.</p>	<p>As a consequence of Article 132 (2) of the Solvency II Directive, the undertaking has to take special care with managing, monitoring and controlling investments it is not familiar with.</p>
603.	Aon Ltd	1.59	<p>These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.</p>	<p>Please refer to the resolution to comment 582.</p>
604.	DIMA (Dublin International Insurance & Management	1.59	<p>Not traded on a regular basis should be clarified by adding “where no generally accepted valuation is available on the market”.</p>	<p>That there is no generally accepted valuation available is not the issue in this context. It is the lack of experience with trading those investments that requires extra care.</p>

605.	Insurance Europe	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>	<p>Please refer to "Status of the Solvency II Directive and the Delegated Acts."</p> <p>During the preparatory phase undertakings have to introduce the processes and procedure necessary to comply with Solvency II requirements.</p>
606.	ROAM-Réunion des Organismes d'assurance mutuell	1.59	<p>La guideline 28 assimile les actifs admis sur des marchés financiers à des actifs non admis sur des marchés financiers si l'entreprise n'opère pas de mouvements réguliers sur ces actifs. Cette mesure va au-delà des exigences de la directives et entraîne une confusion. (quel seuil retenir ? etc ...)</p>	<p>Please refer to the resolution to comment 602.</p>
607.	Aon Ltd	1.60	<p>These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.</p>	<p>Please refer to the resolution to comment 582.</p>
608.	CRO Forum and CFO Forum	1.60	<p>We feel that the prescribed guidelines contain unnecessary detail. It also does not take into account the latest regulatory development in the field of derivatives, which will among other introduce a clearing for OTC transactions, and therefore significantly reduce the risks with the quality, security and liquidity of the transactions.</p> <p>Finally, the provisions primarily make sense in the context of Pillar 1, and specifically the calculation of capital requirements net of risk mitigation instruments. We would recommend simplifying the provisions out of the pre-implementation package, and keep only the latter element '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</p>	<p>It is only the risks linked to the transaction itself but not all the risks linked to derivatives.</p> <p>Disagree. This is a further detailing of supervisory expectations as regard articles 44 and 132.</p>

			derivatives where derivatives are used to contribute to a reduction of risks or as a risk mitigation technique' for the end-of-state guidelines.	
609.	Insurance Europe	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>	<p>Please refer to the resolution to comment 608.</p> <p>EIOPA disagrees.</p>
610.	Aon Ltd	1.61	<p>These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.</p>	<p>According to Article 132 of the Solvency II Directive, the use of derivative instrument is only allowed insofar as they contribute to a reduction of risks or facilitate efficient portfolio management. The Guideline specifies under which conditions derivatives can be said to facilitate efficient portfolio management and that the undertaking must</p>

				demonstrate that its use of derivatives is compliant with the prudent person principle.
611.	CRO Forum and CFO Forum	1.61	See 1.60 and the "whole portfolio is improved" requirement is not proportionate. Therefore we suggest that this guideline is removed	EIOPA means "the portfolio as a whole" rather than "the whole portfolio" and has changed the wording.
612.	FEE	1.61	We consider that "Paragraph 1.61 test" could also apply to securitised instruments.	EIOPA will consider this for the final Level 3 Guidelines.
613.	Groupe Consultatif Actuariel Européen	1.61	The wording of this guideline is ambiguous. We suggest combining 1.60 and 1.61, and also including a guideline covering the need to monitor derivative performance against the objectives and mandates set out as per the derivative policy and investment mandates.	EIOPA does not see the alleged ambiguity. There is a certain link between 1.60 and 1.61 but combining them could actually be misleading. 1.61 involves monitoring the performance but not in order to assess how good the performance was but to demonstrate compliance with the requirements attached to the use of derivatives, i.e. they may only be use if the serve certain purposes.
614.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.61	In the interest of brevity of guidelines, we doubt that this really adds anything to the requirement in 1.60. It is the investment policy which should specify the purpose(s) of using derivatives.	EIOPA disagrees. This is not about specifying the purpose of using derivatives at all. It is

				about concrete criteria for assessing whether what the undertaking has done actually has facilitated portfolio management.
615.	Insurance Europe	1.61	See comment above. Additionally it is unclear how the principle in 1.8 interacts with the requirements on investments.	Please refer to "Prudent person principle" of the Feedback Statement.
616.	Aon Ltd	1.62	These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.	Please refer to the resolution to comment 582.
617.	CRO Forum and CFO Forum	1.62	See remark 1.60. We suggest to remove this guideline	Please refer to the resolution to comment 608.
618.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.62	In the interest of brevity of guidelines, we doubt that this really adds anything to the requirement in 1.60. It is the investment policy which should specify the purpose(s) of using derivatives.	EIOPA disagrees. This is not about specifying the purpose of using derivatives ex ante at all. The documentation of the rationale refers to the rationale for choosing the specific derivatives actually used. In the same way the demonstration of the effective risk transfer does not refer to intentions but to showing that what was done worked as intended.
619.	Insurance Europe	1.62	See comments on 1.60	Please refer to the resolution to comment

				608.
620.	Aon Ltd	1.63	These appear to be new requirements. These guidelines should not introduce additional requirements as compared to Level 1 and draft Level 2 text.	Please refer to the resolution to comment 582.
621.	CRO Forum and CFO Forum	1.63	<input type="checkbox"/>	
622.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.63	<p>We suggest that, consistently with the explanatory text, this guideline be amended to:</p> <p>In accordance with Articles 44 and 132 of Solvency II, national competent authorities should ensure that, where the undertaking invests in securitised instruments, it ensures that its interests and the interests of the originator or sponsor concerning the securitised assets are well understood and aligned.</p>	Agree. EIOPA has changed the wording according to your suggestion.
623.	Insurance Europe	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>	Not at all. This follows from expected requirements on repacked loans requirements in the Implementing Measures.
624.	CRO Forum and CFO Forum	Chapter V General Comments	The level of detail with which the roles and responsibilities of each of the key functions are described is excessive. We feel strongly that each undertaking should be given the liberty to choose how to organize its internal functions with the caveat of preserving independence of control tasks from operations.	Roles and responsibilities of key functions are not described. Chapter V describes the capital management policy matters which undertakings should

				consider when preparing for compliance with Articles 41 and 93 of the Solvency II Directive.
625.	DIMA (Dublin International Insurance & Management)	Chapter V General Comments	The requirement for an additional policy should be deleted and capital management should be addressed in an existing policy.	These Guidelines make clear the importance of preparing for capital management practices to support the outcomes of articles 41 and 93 of the Solvency II Directive.
626.	German Insurance Association (GDV)	Chapter V General Comments	<p>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.</p> <p>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.</p>	<p>Respondents may have found the manner in which articles 41 and 93 of the Solvency II Directive are referenced suggests that they impose a direct obligation for a capital management plan and medium term capital plan. This is not the case. However, in order to achieve the outcomes required by those articles, a capital management policy and medium term capital plan is required.</p> <p>The business planning period is often medium-term and even if it is long-term that does not</p>

				necessarily mean that everything that is already on the radar already needs to be transformed into a specific plan.
627.	Insurance Europe	Chapter V General Comments	<p>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.</p> <p>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.</p>	Please refer to the resolution to comment 626.
	Lloyd's	Chapter V General Comments	<p>We have reservations about the inclusion of this Chapter in the Guidelines. Development of a Capital Management Policy is an entirely new regulatory requirement, not mentioned in the Directive or draft Level 2 measures. Articles 41 and 93 do not require such a Policy. It looks as though EIOPA could introduce any policy it wants and justify it as being « in accordance with » these Articles.</p> <p>We therefore suggest that this section is removed.</p>	Please refer to the resolution to comment 626.
628.	Aon Ltd	1.64	Capital management policy: these are very specific requirements which have not been previously introduced and would fit better into the Guidance than in the interim requirements – they do not appear to be principles based.	Please refer to the resolution to comment 625.
629.	Association of Financial Mutuals	1.64	We welcome the use of the wording "the undertaking should be developing" as this emphasises the glidepath to eventual Solvency II compliance rather than immediate compliance when the Guidelines are introduced. Similar wording elsewhere would be helpful.	Noted.

630.	Deloitte Touche Tohmatsu	1.64	We have found no clear basis under the Directive Articles 41 and 93 for a capital management policy. Additionally, the current wording of the guideline does not include consideration of the fiduciary duties to shareholders in relation to the referred to capital instruments. It should be at the discretion of undertakings to establish such a policy where relevant. This requirement should not be applied until its basis has been established under Solvency II. We propose deletion of this requirement.	Please refer to the resolution to comment 626.
631.	DIMA (Dublin International Insurance & Management	1.64	This is a new requirement and therefore is inappropriate to introduce within interim measures. Please see comment at 1.40.	Please refer to the resolution to comment 625.
633.	German Insurance Association (GDV)	1.64	It is not clear the legal hook for the requirement of a capital management policy. Neither in art. 41 nor in art. 93 of the Solvency II Directive a Capital Management Policy is required. This should be captured by ORSA. As such we would propose to delete this Guideline.	Please refer to the resolution to comment 626.
634.	Groupe Consultatif Actuariel Européen	1.64	Guideline 31 focusses on the type of capital held rather than on how capital is comprised and as such, is too narrow in scope	EIOPA does not agree. Since Guideline 32 suggests that the medium term capital plan should include consideration of the application of limits, and Guideline 31 refers to procedures to monitor the issuance of own fund items according to the medium term capital management plan, this would include consideration of quality of capital.

635.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.64	This draft guideline may require specific clarification in the probable circumstance where detailed own funds requirements under Solvency II will not have been implemented.	<p>The guideline asks undertakings to begin developing capital management policy. Many aspects of this - such as procedures to manage capital issuance, and procedures to ensure that terms and conditions of own fund items (whether Solvency I or Solvency II) are clear - are common to both Solvency I and Solvency II. Whilst some detailed calculations performed as part of the procedures will differ under Solvency I and Solvency II, EIOPA sees no reason why the overall procedures should vary significantly.</p> <p>This is a dynamic and evolutionary approach starting from Solvency I and moving towards Solvency II.</p>
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636.	Insurance Association of Cyprus	1.64	<p>We do not see how Articles 41 and 93 of Solvency II can lead to the present requirement for a capital management policy. Firstly, we consider this to be an unnecessary burden during the preparatory stage. Second, we are concerned that this policy would have to be drawn up in relation to the hybrid regime that will apply during the preparatory phase and will subsequently have to be redrafted in relation to the full SII regime.</p> <p>We propose the deletion of this guideline.</p>	Please refer to the resolution to comment 626.
637.	Insurance Europe	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>	Please refer to the resolution to comment 626.
638.	International Underwriting Association of London (IUA)	1.64	<p>It does not appear appropriate to us to introduce such a level of prescription.</p>	Respondent gave no reason for their assertion, so response not possible.
640.	MGM Advantage	1.64	<p>We welcome the use of the wording “the undertaking should be developing” as this emphasises the glidepath to eventual Solvency II compliance rather than immediate compliance when the Guidelines are introduced. Similar wording elsewhere would be helpful.</p>	Noted. EIOPA has reworded the Guideline to further reinforce this.
641.	ROAM- Réunion des Organismes d’assurance	1.64	<p>La guideline 31 crée une obligation de définir une politique de description des procédures de gestion des fonds propres devant mesurer les besoins en fond propres de façon prospective. Quelle est la base légale de cette guideline?</p>	Please refer to the resolution to comment 626.

	mutuell		Les articles 41 et 93 visés ne font aucune mention de ce type d'obligation.	
643.	Deloitte Touche Tohmatsu	1.65	We have found no clear basis under the Directive Articles 41 and 93 for a medium term capital management plan. It should be at the discretion of undertakings to establish such a plan where relevant. This requirement should not be applied until its basis has been established under Solvency II. We propose deletion of this requirement.	Please refer to the resolution to comment 626.
645.	German Insurance Association (GDV)	1.65	See comments on 1.64. We propose to delete this Guideline.	Please refer to the resolution to comment 626.
646.	Groupe Consultatif Actuariel Européen	1.65	Guideline 32 focusses on the type of capital held rather than on how capital is comprised and as such, is too narrow in scope	EIOPA does not agree. Since Guideline 32 suggests that the medium term capital plan should include consideration of the application of limits, and Guideline 31 refers to procedures to monitor the issuance of own fund items according to the medium term capital management plan, this would include consideration of quality of capital.
647.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.65	This draft guideline may require specific clarification in the probable circumstance where detailed own funds requirements under Solvency II will not have been implemented.	The Guideline asks undertakings to begin developing capital management policy. Many aspects of this -

				<p>such as procedures to manage capital issuance, and procedures to ensure that terms and conditions of own fund items (whether Solvency I or Solvency II) are clear – are common to both Solvency I and Solvency II. Whilst some detailed calculations performed as part of the procedures will differ under Solvency I and Solvency II, EIOPA sees no reason why the overall procedures should vary significantly.</p> <p>This is a dynamic and evolutionary approach starting from Solvency I and moving towards Solvency II.</p>
648.	Insurance Association of Cyprus	1.65	See our comments in 1.64	Please refer to the resolution to comment 626.
649.	Insurance Europe	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	Please refer to the resolution to comment 626.

			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.	
651.	Munich Re	1.65	As aspects of Capital Management are not an original issue of governance they should be addressed in CP-13/09.	EIOPA does do not agree. This Guideline refers to the governance arrangements in place over capital management, not the capital management itself.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.65	The requirements of development of medium-term capital management plans do not arise from Article 41 or Article 93 of Solvency II. Moreover if such requirement is considered the definition of "medium-term" period is required.	Respondents may have found the manner in which articles 41 and 93 of the Solvency II Directive are referenced suggests that they impose a direct obligation for a medium term capital plan. This is not the case. However, in order to achieve the outcomes required by those articles, a medium term capital plan is required.
652.	ROAM- Réunion des Organismes d'assurance mutuell	1.65	Idem. Cf commentaires 1-64 pour le plan de gestion des fonds propres à moyen terme. Quelle articulation avec l'ORSA ?	Please refer to the resolution to comment 626. Guideline 32 makes clear the interaction with the forward looking

				assessment of the undertakings own risks (based on the ORSA principle).
654.	Aon Ltd	1.66	Capital management policy: these are very specific requirements which have not been previously introduced and would fit better into the guidance than in the interim requirements – they do not appear to be principles based.	Please refer to the resolution to comment 625.
655.	Association of Financial Mutuals	1.66	We comment separately on the technical issues with the FLAORP approach where until clarity is obtained on the LTGP it is unclear on what basis forward projections of capital requirements should be made.	EIOPA agrees that those undertakings affected by the lack of clarity regarding treatment of LTGP calculate their capital requirement until certainty is achieved. The level of own funds to be held under whatever regime is only input to the plan and this should not prevent them developing, as a minimum, other areas of the medium term capital plan, including how the undertaking will monitor planned capital issuance, maturity and application of distribution policy. Some development work may also be possible based on

				existing approaches regarding design of the monitoring processes regarding application of limits, even if the numeric value of those limits cannot yet be determined.
656.	Deloitte Touche Tohmatsu	1.66	We have found no clear basis under the Directive Articles 41 and 93 for a medium term capital management plan. It should be at the discretion of undertakings to establish such a plan where relevant. This requirement should not be applied until its basis has been established under Solvency II. We propose deletion of this requirement.	Please refer to the resolution to comment 626.
658.	Groupe Consultatif Actuariel Européen	1.66	The ORSA and output from the Risk Management system are cited as key inputs to the capital management plan. These inputs will often be located within the Risk Management Function and we would note that one of the other key functions within the undertaking that can play a valuable role here in respect of input and relevant insight to risk is the Actuarial Function. A direct link should similarly be drawn between these functions.	This is implicit within the general meaning of risk management. The introduction of references to a particular function might suggest that other functions are not required.
659.	Insurance Europe	1.66	See comments above	Please refer to the resolution to comment 626.
661.	MGM Advantage	1.66	We comment separately on the technical issues with the FLAORP approach where until clarity is obtained on the LTGP it is unclear on what basis forward projections of capital requirements should be made.	EIOPA agrees that those undertakings affected by the lack of clarity regarding treatment of LTGP calculate their capital requirement until certainty is achieved.

				<p>The level of own funds to be held under whatever regime is only input to the plan and this should not prevent them developing, as a minimum, other areas of the medium term capital plan, including how the undertaking will monitor planned capital issuance, maturity and application of distribution policy. Some development work may also be possible based on existing approaches regarding design of the monitoring processes regarding application of limits, even if the numeric value of those limits cannot yet be determined.</p>
	<p>Powszechny Zakład Ubezpieczeń Spółka Akcyjna</p>	1.66	<p>Please refer to point 1.65.</p>	<p>No comment was given for 1.65.</p>
663.	<p>German Insurance Association (GDV)</p>	<p>Chapter VI General Comments</p>	<p>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</p>	<p>Please refer to "Key functions" of the Feedback Statement.</p>

664.	Insurance Europe	Chapter VI General Comments	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	Please refer to "Key functions" of the Feedback Statement.
665.	MSV Life	Chapter VI General Comments	It is not clear from the proposed guidelines to what extent can certain roles or functions be combined. More information was expected (particularly by Smaller Companies) about the degree to which it is acceptable to combine certain roles or functions. By way of example can the Internal Controls function be combined with Risk Management and can the Legal and Compliance Function be combined with the Risk Management Function.	The aim of these Guidelines is to detail the tasks of the key functions. Is up to the undertaking to define how certain roles or functions can be combined. In the implementation of the key functions proportionality applies. Please note that "Internal Controls function" is not a key function.
666.	NFU - Nordic Financial Unions	Chapter VI General Comments	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. 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	The Directive does not require whistle-blowing systems and there are also no other Directive requirements from which it could be inferred that whistle-blowing is required. EIOPA has mentioned the issue in Guideline 36 so that undertakings at least consider the appropriateness of

			<p>mandate and resources to follow-up on the warnings and, where necessary, investigate the entire company.</p> <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>	<p>providing for whistle-blowing to the supervisory authority. But for lack of a legal hook this can be no hard and fast requirement.</p>
667.	AMICE	1.67	<p>Guideline 33 – Internal Control Environment</p> <p>In accordance with Article 46 of the Level 1 text, national competent authorities should ensure that the undertaking promotes the importance of performing appropriate internal controls by ensuring that all relevant personnel are aware of their role in the internal control system.</p> <p>The control activities should be commensurate to the risks arising from the activities and processes to be controlled.</p>	<p>No comment provided here.</p>
668.	Deloitte Touche Tohmatsu	1.67	<p>We suggest, in line with our comments on paragraphs 1.21 and 1.22, that the compliance function is specifically identified to carry out these roles and responsibilities.</p>	<p>Please refer to the resolution to comment 185 and “Compliance Function” of the</p>

			We propose rewording the paragraph as follows: "In accordance with Article 46 of Solvency II, national competent authorities should ensure that the compliance function promotes the importance of performing appropriate internal controls by ensuring that all personnel are aware of their role in the internal control system. The control activities should be commensurate to the risks arising from the activities and processes to be controlled."	Feedback Statement. EIOPA does not see this as the task of the compliance function.
669.	German Insurance Association (GDV)	1.67	Guideline 33 states that "all personnel" should be aware of their role in the internal control system. 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.	Internal controls do affect all personnel. It is important that employees do not look away if they become aware of internal control issues just because they feel it is not their responsibility to bring this to the attention of the relevant person(s) in the undertaking.
670.	Insurance Association of Cyprus	1.67	EIOPA should clarify that only those employees who are affected by the internal controls should be aware of their role in the internal control system.	Please refer to the resolution to comment 669.
671.	Insurance Europe	1.67	Guideline 33 states that "all personnel" should be aware of their role in the internal control system. 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.	Please refer to the resolution to comment 669.
673.	MGM Advantage	1.67	The requirement that "all personnel are aware of their role in the internal control system" may be difficult to achieve cost-efficiently and may be setting a too high a target. Although we support the general concept, we are concerned that the current wording may require a level of technical training that is not proportionate to the value it would bring.	"Awareness" does not equal (extensive) technical training.

	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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?	Please refer to "Compliance Function" in the Feedback Statement.
674.	ROAM- Réunion des Organismes d'assurance mutuell	1.67	Ajouter le mot « relevant » devant « personnel are aware of their role in the internal control system » pour qu'en effet, les personnes impliquées soient bien conscientes de leur rôle et responsabilités.	Please refer to the resolution to comment 669.
675.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.67	1.142 of the explanatory text doesn't mention the risk assessment component in the definition of IC. This is a key component for the efficiency of internal control measure and their alignment with the risk policy adopted by the AMSB.	The Explanatory Text is outside the scope of the consultation.
	Stowarzyszenie Audytorów Wewnętrznych IIA Polska	1.67	We agree with intention, that all personnel should be aware of their role in internal control system, especially in reporting duties. We find very important that that control activities should be commensurate to the risks arising from the activities and processes to be controlled. On the one hand this indicates freedom in choosing appropriate internal control measures. On the other hand it makes the undertaking responsible for appropriate selection.	Noted. This is exactly the message.
677.	Aon Ltd	1.68	This type of responsibility creates a significant burden for the Risk Management Function at the parent level. There are also challenges associated with potential different regulatory expectations where entities within the groups reside in different countries.	Noted.
678.	DIMA (Dublin International Insurance & Management	1.68	Reference is made to a need for consistent internal control systems across the group, which should be caveated with "as appropriate and applicable to EEA regulated entities".	Disagree: The word consistent leaves room for interpretation.
679.	Insurance Europe	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	Please refer to the resolution to comments

			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?	678 and 38.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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?	Please refer to "Compliance Function" in the Feedback Statement.
683.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.69	While we readily agree with the principle, this guideline is so generally worded as to be unverifiable. Guidelines 6 and 7 appear to cover the point adequately.	EIOPA disagrees about the verifiability. Guideline 6 and 7 cover different aspects of decision-making with regard to the AMSB.
684.	Insurance Europe	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.	Undertakings should use the preparatory phase to organise the compliance function in a way that ensures that it is carried out in accordance with Solvency II requirements.
686	Stowarzyszenie Audytorów Wewnętrznych IIA Polska	1.69	This statement is unprecious. It only give the information about duties of establish and providing monitoring and reporting mechanism within internal control system. But it is obvious in accordance with article 46 of Solvency II	The important part of the Guideline is that the monitoring and reporting mechanisms need to provide sufficient input to the decision-making by the AMSB.
687.	Urs Roth	1.69	The quality of the internal control environment is related to the	It may be relevant to

			<p>operational risk. The most serious operational risk events are associated with defaults in the internal control environment of the undertakings. So I suggest that undertakings should assess their internal control environment in order to estimate the solvency needs for their operative risk. Guidelines for the assessment of the internal control environment should inserted in this article. Guidelines for the estimation of the solvency needs should inserted in article 1.38 of CP_13_009.</p> <p>““In accordance with Article 46 of Solvency II, national competent authorities should ensure that the monitoring and reporting mechanisms within the internal control system of the undertaking provide the administrative, management or supervisory body with the relevant information for the decision-making processes.</p> <p>The monitoring and reporting mechanism should at least</p> <p>a) concern all material risks in the undertaking internal processes, especially arising from</p> <ol style="list-style-type: none"> 1. Underwriting and reserving, 2. Reinsurance, 3. Asset-liability-management and 4. Investment-management <p>b) concern all material risks affecting the undertakings infrastructure</p> <p>c) concern all material legal risks</p> <p>d) assess the control mechanism concerning the process-risks</p> <p>e) asses the precautionary measures concerning the infrastructure-risks, especially the contingency plans</p> <p>f) take into account the specific risk exposure of the undertaking and the industry standards of the control mechanism and precautionary measures””</p>	<p>take the effectiveness and efficiency of the internal control system into account in determining solvency needs with regard to operational risk but the undertaking cannot determine solvency needs solely on the basis of that assessment. The requirement to make an assessment of the internal control system is set out in Article 47 of the Directive.</p> <p>You are talking about the monitoring and reporting of the risk management system here.</p>
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688.	German Insurance Association (GDV)	Chapter VII General Comments	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	Please refer to the resolution to comment 729.
689.	Insurance Europe	Chapter VII General Comments	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	Please refer to the resolution to comment 729.
690.	The European Confederation of Institutes of Internal Auditing (ECIIA)	Chapter VII General Comments	ECCIA appreciates the role for Internal Audit considered in the guidelines especially the high independence and the role of Internal Audit as the assurance function for the AMSB. We think the articles of the chapter should be aligned with articles of chapter III. It should start e. g. with description of the general tasks of Internal Audit in the guideline such as performing audits covering all activities of the undertaking with a special focus on the system of governance, building a risk based audit plan, follow-up of recommendations and regular reporting to the AMSB about its activities. Furthermore a general link to the existing IIA standards could support the independence and effectiveness of the internal audit function.	There are certain conventions for the drafting of Guidelines, e.g. repetition with Level 1 and 2 is to be avoided. EIOPA only addresses the general task of a function where it is considered that specification is necessary.
691.	FEE	1.70	The audit function interacts with different functions. So, we consider that the independence of an auditor can be different according to different tasks. In our view Paragraph 1.70 should also refer to adequate resources made available to enable internal audit fulfil its role.	The internal audit function has to be fully independent.
693.	German Insurance Association (GDV)	1.70	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 would propose to rephrase the explanatory text by stating that "efficiency should also be comprised in the evaluation".	The Explanatory Text is outside the scope of the consultation.
694.	Groupe Consultatif	1.70	This guideline stipulates that the internal audit function should not be subject to instructions from the AMSB. We suggest extending the wording	No, not to any instructions from the

	Actuariel Européen		to include "executive management". We suggest replacing the word "instructions" with "influence". The AMSB should be able to request specific areas to be included in the internal audit without impairing its independence.	<p>AMSB, only to AMSB instructions that can impair its independence and impartiality.</p> <p>EIOPA agrees that the AMSB is able to do so without breaching the Guideline (see Explanatory Text). This can however not be clarified by substituting "influence" for "instructions" since exercising influence is wider and includes giving instructions.</p>
695.	Insurance Europe	1.70	<p>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.</p> <p>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".</p>	<p>Disagree.</p> <p>It is expected that the Level 2 text will address this issue and require strict separation. The Guidelines do not mention the issue in order to avoid repetition.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>

697.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.70	<p>ECIIA believes that the independence of Internal Audit is key to perform its assurance function towards the AMSB. Key for its independence are</p> <ul style="list-style-type: none"> • a reporting line functionally to the Board and administratively to the Chief Executive Officer (CEO) including the attendance of Board or Committee meetings and private sessions, if needed, with them without top management, • the right to audit any activity of an insurance undertaking at its discretion without any limitation and free of influence in the performance of its audit, • full access to all information within the company as well as active inclusion in the information flow of the company and • Decision of hiring and dismissal of the Head of Internal Audit should belong to the Board or the Audit Committee. <p>Guideline 35 should be rephrased.</p>	<p>It is expected that the Level 2 text will address some of these issue, in particular bullet points 2 and 3. In order to avoid repetition they are not mentioned in the Guidelines.</p> <p>EIOPA does not agree that the internal audit function should necessarily be entitled to attend Board or Committee meetings and private sessions. This is an issue for national company law.</p> <p>EIOPA does not think that the full independence of the internal audit function necessarily calls for specific requirements with regard to hiring and dismissal of the person responsible for the internal audit function and that this can therefore be included in the Guideline.</p>
698	Stowarzyszenie Audytorów	1.70	Organisational independence and personal objectivity are essential requirements to be internal audit professional. This statement gives not	EIOPA does not disagree, however,

	Wewnętrznych IIA Polska		enough emphasis to protect both of them. Abusing independence or objectivity could be as well limitation in internal audit activity's access to records, personnel and physical properties relevant to the performance of engagement.	ethical standards for internal auditors are outside the scope of Solvency II.
699.	AMICE	1.71	<p>Guideline 36 – Internal audit policy</p> <p>In paragraph b) the term “supervisory authority” should be replaced by the AMSB in order to be aligned with article 47(3) from the Level 1 that foresees that any findings and recommendations of the internal audit should be reported to the administrative, management or supervisory body.</p> <p>The principle of proportionality must be applied to paragraph c). This guideline should not result in a requirement to have several employees dedicated to the internal audit function.</p>	<p>EIOPA definitely means the supervisory authority not the AMSB.</p> <p>c) does not imply that the internal audit function always consists of several employees. The number of people performing the internal audit function should be such that the responsibilities of the function can be discharged appropriately.</p>
700.	Aon Ltd	1.71	This paragraph is very prescriptive. This creates the risk that the Internal Audit Policy will be limited to the defined list and will not create broad principles that are applicable in all circumstances.	The wording makes it very clear that the list is not comprehensive. In any case Guideline 9 with general requirements on written policies is applicable to any specific policy as well.
701.	CRO Forum and CFO	1.71	We suggest to eliminate paragraph 1.71.b) which seems to implicitly establish a reporting line between the person responsible for the internal	Neither b) nor c) have the assumed meaning.

	Forum		<p>audit function and the supervisory authority. Under the current legal framework it is the AMSB's obligation to report to the supervisory authority and the Solvency II Directive does not provide for similar direct reporting requirements for any of the four control functions. The Guidelines should not introduce such requirements either, because this could negatively affect the System of Governance. At least the reason for such reports would have to be clearly specified, and the same applies to the conditions which would need to be fulfilled to justify such additional requirements. Supervisory authorities regularly receive the internal audit reports to the AMSB and can, of course, discuss any issues directly with the internal audit function in the course of supervisory reviews.</p> <p>We further suggest to eliminate paragraph 1.71.c) which seems to require a kind of regular rotation of internal audit staff to ensure independence and objectivity of the internal audit function. The size of the internal audit function normally would not allow for a regular rotation. In addition, the need to build special skills and knowledge to cope with the complexity of processes and systems to be audited does not encourage rotation but instead specialization?.</p> <p>Conflicts of interest that may exist in some cases (e.g. due to personal relationships) must be solved individually (e.g. by additional managerial oversight or by hiring outside auditors if other alternatives are not available).</p>	<p>The undertaking is just required to consider these issues.</p> <p>EIOPA has clarified this through rewording.</p> <p>Please refer to "Internal audit policy" of the Feedback Statement.</p>
702.	German Insurance Association (GDV)	1.71	<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. ". The internal audit function is an instrument of the AMSB. For retaining a confident cooperation there should be no obligation to inform the supervisory authority by the internal audit function.</p> <p>According to the company law only the AMSB is the authorized representative and liable for actions or omissions of the company. Therefore only the AMSB should be responsible for providing information (like the written internal audit report) to the supervisory authority. We propose to delete b)</p> <p>The rotation mentioned under c) is not required by the Solvency II</p>	<p>The Guideline does not imply a requirement for reporting to the supervisory authority.</p> <p>Please refer to the resolution to comment 701.</p>

			Directive and could be burdensome for small entities or where special know-how for audits is required. Rotation is only one possibility to ensure independency. We propose to change the wording into "criteria for ensuring the objectivity"	
703.	Groupe Consultatif Actuariel Européen	1.71	<p>We suggest that the internal audit policy might also set out periodic independent reviews of the internal audit function itself.</p> <p>With reference to the point b) "internal rules setting out the procedures the person responsible for the internal audit function needs to follow before informing the supervisory authorities", is this intended to be a whistleblowing requirement where the internal audit function has serious concerns that the undertaking is not addressing deficiencies identified by the internal audit function that could threaten the solvency of the undertaking? If so, this should be made clearer.</p>	<p>EIOPA agrees that undertakings should consider such a periodic independent review but this cannot be a requirement and would not be part of the internal audit policy.</p> <p>No, the undertaking should give consideration to allowing whistle-blowing and the internal audit policy would be the medium to provide for this kind of escalation but whistle-blowing is not a requirement.</p>
704.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.71	The rationale and intent of sub-paragraph (b) is ambiguous and is not explained by the explanatory text. We agree that there should be procedures for escalation of internal audit findings, usually via an independent audit committee. EIOPA needs to clarify what is intended by the reference to 'the supervisory authority'.	The supervisory authority is the national competent authority.
705.	Insurance Association of Cyprus	1.71	<p>In relation to point (b), we underscore that Solvency II does not contain any requirements in relation to whistle blowing. The proper order is for the internal audit function to report internally and then it is up to the Board to decide how to act. Therefore we propose deleting the sentence "...before informing the supervisory authority".</p> <p>In addition, we do not agree with point (c) concerning compulsory</p>	Please refer to the resolution to comment 701.

			rotation of staff assignments. This would be overly burdensome for the large number of small undertakings in Cyprus.	
706.	Insurance Europe	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 and related procedures documents 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>	<p>Please refer to the resolution to comment 701.</p> <p>EIOPA does not agree that a) to c) should be in procedures documents.</p> <p>The Explanatory Text is outside the scope of the public consultation.</p>

708.	Munich Re	1.71	<p>We suggest to eliminate paragraph 1.71.b which seems to implicitly establish a reporting line between the person responsible for the internal audit function and the supervisory authority. Under the current legal framework it is the AMSB's obligation to report to the supervisory authority and the Solvency II Directive does not provide for similar direct reporting requirements for any of the four control functions. The Guidelines should not introduce such requirements either, because this could negatively affect the System of Governance. At least the reason for such reports would have to be clearly specified, and the same applies to the conditions which would need to be fulfilled to justify such additional requirements. Supervisory authorities regularly receive the internal audit reports to the AMSB and can, of course, discuss any issues directly with the internal audit function in the course of supervisory reviews.</p> <p>We further suggest to eliminate paragraph 1.71.c) which seems to require a kind of regular rotation of internal audit staff to ensure independence and objectivity of the internal audit function. The size of the internal audit function normally would not allow for a regular rotation and the need to build up special skills and knowledge to cope with the complexity of processes and systems to be audited does not encourage such rotation. Conflicts of interest that may exist in some cases (e.g. due to personal relationships) must be solved individually (e.g. by additional managerial oversight or by hiring outside auditors if other alternatives are not available).</p>	Please refer to the resolution to comment 701.
709.	ROAM- Réunion des Organismes d'assurance mutuell	1.71	<p>b) il faut remplacer « supervisory authority » par « AMSB » en accord avec l'article 47-3 de la directive qui prévoit la communication de toutes conclusions et recommandations de l'audit interne à l'AMSB.</p> <p>c) le principe de proportionnalité doit s'appliquer. Cette guideline ne doit pas aboutir à l'obligation d'avoir plusieurs collaborateurs dédiés à l'audit interne.</p>	Please refer to the resolution to comment 699.
710.	RSA Insurance Group	1.71 (point c)	Rotating staff after each audit is not practical or cost effective where the audit team in country is small.	Please refer to the resolution to comment 701.

711.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.71	<p>ECIIA thinks the internal audit policy should in first place cover, how the insurance undertaking ensures its independence (see 1.70), followed by the rights (right to audit every activity, information) and general tasks Internal Audit has to perform (e.g. audit, monitoring of projects, consulting on internal controls) and which processes (planning, auditing, reporting, follow-up, quality assurance) should be in place and who is responsible for it (see also 1.29 of the Guidelines). It should comply with the IIA standards. The points a) to c) are not completely clear to us and we have the following remarks:</p> <p>a) The wording „can be called upon” is misleading. The activities of Internal Audit base on the risk based audit plan approved by the AMSB. The activities comprises ex-post and ex-ante audits. Ex-ante audits may comprise the audit of projects as well as some consulting work by defining internal controls. The audit plan is not fix and may be adjusted, if new risks arises. But it is the decision of Internal Audit to add new activities to the plan based on its risk assessment and forward it to the AMSB for approval. Otherwise the activities of Internal Audit may be determined by third parties, which is not in line with the independence of Internal Audit. An appropriate rule should be set under 1.74. The point should be deleted.</p> <p>b) Internal Audit is an internal function of the insurance undertaking responsible solely towards the AMSB. The Solvency II directive does not foresee any direct reporting line towards the supervisory authority. Such a clause would jeopardise the position of Internal Audit in the undertaking as the independent assurance function towards the Board and may prevent open communication between Internal Audit and the other functions in an insurance undertaking including the AMSB. The point should be deleted.</p> <p>c) We see that rotation of staff supports the independence and objectivity of auditors. But we do not think a rotation of staff within an internal audit department is visible for most insurance undertakings. The development of additional, very specialised skills already means a challenge for Internal Audit. A rotation would mean that either Internal Audit has to hold available additional staff to cover all activities or, more probable, a less skilled auditor has to perform the audit. To ensure the</p>	<p>Please note that the Guidelines contain Guideline 9 which sets out requirements applying to all written policies.</p> <p>EIOPA probably means what you call “ex-ante audits” and does not expect them to be covered in the internal audit plan because they are not really audits but ex-ante consultation/advice.</p> <p>Please refer to the resolution to comment 701.</p> <p>Please refer to the resolution to comment 701.</p>
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			independence of internal auditors the rules of the IIA Standards regarding independence and objectivity should be adhered to. The point should be deleted.	
	Stowarzyszenie Audytorów Wewnętrznych IIA Polska	1.71	In this case preferred should be approach represented by IIA, which divide internal audit activity with assurance and consulting activities.	EIOPA is generally very careful about borrowing terminology as this could be taken to imply a full endorsement of what is generally considered to be the concept behind a term.
715.	CRO Forum and CFO Forum	1.73	<p>Part (d) requires a "report on its findings and recommendations to the AMSB" suggesting all findings need to be reported to the AMSB rather than just significant risk/control issues. An element of judgement would enable greater focus on the key issues, which reflects best practice.</p> <p>Part (e) similarly suggests follow up on all findings. A risk based approach should be performed across all control remediation actions not just those raised by Internal Audit. i.e. a sample approach focussed on material control issues is reflected in best practice.</p> <p>We propose the following edit to Guideline 37:</p> <p>d) "issues recommendations based on the result of to the findings of the audit work carried out in accordance with point (a) and submits a written report to the administrative, management or supervisory body on at least an annual basis"</p> <p>verifies compliance with the decisions taken by the administrative, management or supervisory body on the basis of those recommendations (where issued referred to in point (d)).</p>	<p>All reporting has to consider the addressee, so obviously a report to the AMSB will focus on the issues that are relevant for the AMSB and not include every minor detail.</p> <p>EIOPA disagrees.</p> <p>EIOPA does not consider this suggested rewording to be helpful.</p>
716.	DIMA (Dublin International	1.73	The guidelines should not stipulate the AMSB to the exclusion of other suitable bodies within the governance structure of an undertaking. The	The Directive requires reporting to the AMSB.

	Insurance & Management		guidelines should not be so prescriptive and in such detail, but should allow the principle to be applied proportionately and as appropriate for a particular system of governance.	This does not exclude additional reporting to other suitable bodies.
718.	Insurance Europe	1.73	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-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).	This would be an explanation which has no place in a Guideline. Flexibility is implicitly included in a risk based approach.
719.	International Underwriting Association of London (IUA)	1.73	In our view, this requirement does not take account of legitimate and appropriate governance models.	Please refer to the resolution to comment 716.
720.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.73	<p>Before defining specific tasks of Internal Audit a clause with the general tasks of Internal audit should be added similar to Guideline 17 (see also our comment under 1.41). General tasks are the audit of all activities of the insurance undertaking including the system of governance. This requires a comprehensive and up to date audit universe, a risk based audit plan, preparing a report about each assignment with findings and recommendations, which should be made available to the AMSB, and a follow-up process.</p> <p>We agree with the determinations made in Guideline 37. But we think the audit plan should not only be reported to the AMSB but it should be approved by the AMSB. The audit plan is the basis for the work to be performed by Internal Audit. Thus the approval by the AMSB gives it a higher legitimation in the organisation.</p> <p>The points (d) and (e) are better under Guideline 38 as it deals with</p>	<p>Please refer to the resolution to comment 690.</p> <p>Approval implies that it is possible to require changes before approval. On account of the full independence of the internal audit function the AMSB can only add to the audit plan.</p> <p>The Guideline is only about the report to the</p>

			<p>findings and recommendations. It should be compulsory for Internal Audit to issue a written report with findings and recommendations after each audit, not only once a year as rightly stated in the explanatory text Guideline (38 1.154.</p> <p>The explanatory text mentions the audit program in point 1.152 and 1.153. ECIIA agrees that it is important to have an audit program in place for each assignment and that it should be handled flexible. However, we do not understand the link to the audit cycle principle. An audit program is the basis for a single audit, which have to be adapted every time before an audit will take place. One can say the principal audit activities are defined in the audit plan, which bases upon the audit universe. The audit universe reflects all activities of an insurance undertaking, which have to be covered by Internal Audit. The audit cycle is reflected in the multi year audit plan ensuring that the audit universe can be covered in a certain period of time. Whereas the audit program is the basis for the audit work to be performed during one specific assignment in one specific year. Therefore the last sentence of point 1.153 should be deleted.</p>	<p>AMSB, the feedback to the "auditees" after each audit is addressed in the Explanatory Text.</p> <p>The Explanatory Text is outside the scope of the consultation. 1.153. of the ET is to be deleted because they have a point.</p>
721.	AMICE	1.74	<p>The principle of proportionality should apply. Insurance companies should not be obliged to carry out audit assignments beyond those provided for in the audit plan.</p>	<p>This has nothing to do with proportionality. The internal audit function needs to be able to react to ad hoc auditing needs and perform assignments earlier than envisaged in the audit plan if necessary.</p>
723.	Groupe Consultatif Actuariel Européen	1.74	<p>We suggest that guidance on the audit plan in point 1.73 include a specific allowance for 'ad-hoc' audits to ensure these are performed. This could prevent them becoming something that is noted and theoretically allowed for, but never actually done.</p>	<p>EIOPA does not think that special time allowance has to be made in case an ad hoc audit is necessary. If this should be the case the audit plan would be changed to give the ad</p>

				hoc audit priority and another audit is postponed.
724.	ROAM- Réunion des Organismes d'assurance mutuell	1.74	Le principe de proportionnalité doit s'appliquer. Attention à ne pas obliger à mener des missions d'audit au-delà de celle prévues dans le plan.	Please refer to the resolution to comment 722.
725.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.74	ECCIA thinks it is important to give Internal Audit the possibility to carry out audits, which are not included in the audit plan (see also our comment to 1.71). The risk situation may change during the year and Internal Audit has to have the possibility to react accordingly. But ECIIA does not see, how "national competent authorities" can ensure it. It is rather the responsibility of the insurance undertaking to do so. This can be done e.g. by having a provision for not planned audit in the plan or by having a revolving plan, which is reviewed and adapted every quarter by the Head of Internal Audit with the approval of the AMSB. This can be ruled in the audit policy.	EIOPA has corrected the wording in the Guideline accordingly. Please refer to the resolution to comment 723.
726.	CRO Forum and CFO Forum	1.75	We propose the following edit to Guideline 38: "In accordance with Article 47 of Solvency II, national competent authorities should ensure that the recommendations (where issued) of the internal audit function of the undertaking include the envisaged period of time to remedy the shortcomings and the persons responsible for doing so."	EIOPA will not clarify the blatantly obvious.
727.	FEE	1.75	Please refer to our comment in Paragraph 1.87.	Please refer to the resolution to comment 857.
729.	German Insurance Association (GDV)	1.75	It is stated 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.	What the appropriate time is to remedy specific shortcoming depends on the shortcomings and

			Also instead of mentioning the "persons" responsible for the remedy of shortcoming, the respective unit should be mentioned here.	therefore cannot be specified in policies or mechanisms. Naming the respective unit responsible for the area in which something is to be remedied provides no added value.
730.	Insurance Europe	1.75	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. Also instead of mentioning the "persons" responsible for the remedy of shortcoming, the respective unit should be mentioned here.	Please refer to the resolution to comment 729.
731.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.75	To make findings and recommendations including the remediation time and the responsible person are one of the major tasks of Internal Audit. They should be part of each audit report to be issued after each audit, not only at an annual basis. Each report should be made available for every member of the AMSB. Therefore the points 1.154 and 1.155 of the explanatory text should be part of Guideline 39. Point 1.158 should become an own Guideline as the follow-up is one of the key tasks of Internal Audit. The explanatory text mentions in 1.157 the coverage of Internal Audit; we see a broader coverage of risks taking into account the risk dimensions of the COSO model strategic, operational, reporting, compliance risks.	Please refer to the resolution to comment 720. The Guideline only addresses the annual report to the AMSB. The AMSB means every member of the AMSB.
	Stowarzyszenie Audytorów	1.75	There is no information about the last stage of engagement: monitoring of dispositions of results or follow-up engagements.	This is in 1.73 e).

	Wewnętrznych IIA Polska			
732.	CRO Forum and CFO Forum	1.76	We propose the following edit: "In accordance with Article 47 of Solvency II, national competent authorities should ensure that the internal audit function of the undertaking issues at least annually an internal audit report to the administrative, management or supervisory body. This report should include information on the extent to which the internal audit function's objectives, the execution of the audit plan and the follow-up of audit recommendations (where issued) and implementation of management remediation actions have been achieved."	Agree. EIOPA has included part of your suggestion in the Guideline. The text in brackets is not necessary for clarification.
733.	DIMA (Dublin International Insurance & Management	1.76	The guidelines should not stipulate the AMSB to the exclusion of other suitable bodies within the governance structure of an undertaking. The guidelines should not be so prescriptive and in such detail, but should allow the principle to be applied proportionately and as appropriate for a particular system of governance.	The Guideline refers to the AMSB as it specifies an existing requirement. It does not imply "the exclusion of other suitable bodies within the governance structure of an undertaking".
735.	German Insurance Association (GDV)	1.76	"	
736.	International Underwriting Association of London (IUA)	1.76	In our view, this requirement does not take account of legitimate and appropriate governance models.	Please refer to the resolution to comment 733.
738.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.76	As mentioned before (see 1.75) an audit report with findings and recommendations has to be issued after each audit and made available to all members of the AMSB. This should be clearly stated in Guideline 39 and not only in the explanatory text to Guideline 38. The explanatory text mentions in point 1.159 that the AMSB should	EIOPA disagrees. The Explanatory Text is

			regularly discuss the audit program. Following our understanding of an audit program (see under 1.73), we do not think it is appropriate to discuss it in the AMSB. The audit program is an internal working paper of Internal Audit, which may be discussed in the AMSB in exceptional cases. The focus of the AMSB should be put on the audit plan.	outside the scope of the consultation.
740.	AMICE	Chapter VIII General Comments	Actuarial Function	
741.	CRO Forum and CFO Forum	Chapter VIII General Comments	<p>Should the requirements for the actuarial function be only related to the submission of information, then the requirements should be reduced to avoid additional overheads for companies. This is particularly important to ensure that entities are not double regulated.</p> <p>Should the original text be maintained, we feel that the tasks and responsibilities of the Actuarial Function, as well as the organisational solution that seems to transpire from the Guidelines and the explanatory text raise the following serious concerns</p> <p>I) The level of detail with which the roles and responsibilities of each of the key functions are described is excessive: we feel strongly that each undertaking should be given the liberty to choose how to organize its internal functions with the caveat of preserving independence of control tasks from operations (see same comment Chapter 5).</p> <p>Whilst we agree with the necessity that internal audit has to be objective and independent from the operational function, we do not think this is also a necessity for the other key functions, mainly risk management, actuarial and compliance. These 3 functions are part of the so-called 2nd line of defense and therefore we see no conflict of interests, as long as they are strictly separated from the first line of defense where risk-taking occurs. Whichever way these functions are organized should be left up to the Company to decide.</p>	<p>Please refer to "Actuarial Function" of the Feedback Statement.</p> <p>Please refer to "key functions" in the Feedback Statement.</p> <p>EIOPA expects the issue to be addressed in the Implementing Measures in such a way that all key functions need to be separate, respecting the proportionality principle.</p>

			<p>II) Without prejudice to our comment above, many of the tasks allotted to the Actuarial Function are in fact control tasks and open the door to potential overlap with the Risk Management function's roles and responsibilities</p> <p>This is true for the Guidelines themselves but it is especially evident when assessing the Explanatory Text.</p> <p>We therefore think that the interim guidelines should be phrased in a way that the organizational structure within the 2nd line of defense is kept flexible. It should be possible to allow undertakings, especially with regards to those tasks that concern valuations and expert opinion, to organize themselves as they feel best fits their internal structures.</p>	Please refer to "Key functions" in the Feedback Statement.
742.	German Insurance Association (GDV)	Chapter VIII General Comments	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.	Please refer to "Key functions" of the Feedback Statement.
743.	Groupe Consultatif Actuariel Européen	Chapter VIII General Comments	<p>There is a « general tasks » introduction guideline missing, similar to the one for the risk management function in Guideline 17. We suggest to include the following guideline after Guideline 39 :</p> <p>"In accordance with Article 48 of Solvency II, national competent authorities should ensure that the undertaking requires the actuarial function to report to the administrative, management or supervisory body on the adequacy of the calculation of technical provisions. The actuarial function should be appropriately empowered to coordinate and constantly</p>	The tasks are already set out in Article 48 of the Solvency II Directive and Guidelines are not supposed to repeat the Level 1 text.

			<p>challenge these calculations, actively contribute to the effective implementation of the risk management system and express opinions on the overall underwriting policy and the adequacy of reinsurance arrangements.” (but also please the point at 1.80 below)</p> <p>EIOPA should also consider whether it would be helpful to prepare a guideline or guidelines to develop the relationship between RMF and AF in different insurer situations. That guideline could also consider situations where there might be potential integration (full or partial) between the two functions.</p> <p>The Actuarial Function must be independent, well-resourced, possibly being a virtual function, with operating and reporting lines throughout the company to fully support its operation. We emphasize the value of actuaries in this process, not just as professionals inside an Actuarial Function but also in relating to the risk management function and the links between the two functions.</p> <p>We note that guideline 46 addresses the contribution of the Actuarial Function to the effective implementation of the risk management system in one specific circumstance, where a company has an internal model under pre-application. Additional guidelines would be helpful in relation to the more general requirement for the Actuarial Function to contribute to the effective implementation of the risk management system.</p>	<p>Please refer to “Key functions” in the Feedback Statement.</p> <p>Noted.</p> <p>EIOPA does not intend to specify the contribution of the actuarial function to the effective implementation of the risk management system at this point in time.</p>
744.	Insurance Association of Cyprus	Chapter VIII General Comments	Undertakings should not be required to comply with Solvency II rules on technical provisions during the preparatory phase.	Undertakings are only required to prepare to comply with those rules during the preparatory period. Please refer to “Purpose of the preparatory phase” of

				the Feedback Statement
745.	Insurance Europe	Chapter VIII General Comments	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.	Please refer to "key function" of the Feedback Statement.
746.	MSV Life	Chapter VIII General Comments	There is no reference to the role of an Appointed Actuary. The position is therefore unclear for those companies who already have an external independent Appointed Actuary in addition to their internal Actuarial Function. Will the role of Appointed Actuary be abolished? It is not clear to what extent can local regulators continue to require insurers to retain the services of their Appointed Actuary. We feel that Appointed Actuaries still have an important role to play especially in the context of e.g. With Profits Funds where the Appointed Actuary can ensure that shareholders interests are not given prominence at the detriment of policyholders interests and that both interests are taken into consideration in taking key decisions in the management of the With Profits Fund. Clearly there would be difficulties if this role is performed by the internal Audit Function.	This is on purpose. The Appointed (or Responsible) Actuary is a concern for some but not all Member States. The question of whether there is still a role for the Appointed Actuary cannot be resolved on the European level. It is up to the Member States concerned to find a solution that seems appropriate to them.
747.	Munich Re	Chapter VIII General Comments	We recommend to add a « general tasks » introduction Guideline to assure consistency with the other key functions. For instance, Guideline 17 describes general tasks for the risk management function.	The Guidelines are not to repeat the text of the Solvency II Directive.
748.	Polish Chamber of Insurance	Chapter VIII General Comments	What exactly is the actuarial function? If undertaking employs an actuary to calculate provisions (for accounting purposes or BE), must it employ second qualified person for validation these calculations? What exactly is the conflict of interest? Does the segregation of duties depend on the size of the undertaking ?	The role of actuarial function under Solvency II is mostly the role of a control function. However, the function is not necessarily prohibited from providing the calculation

				of the technical provisions. This is a proportionality issue. It is for the undertaking concerned to put in place solutions to manage the conflict of interest if the actuarial function calculates and validates the technical provisions.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	Chapter VIII General Comments	<p><u>General comment (connection to Pillar I Solvency II requirements)</u></p> <p>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.</p> <p>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.</p> <p><u>General comment (scope of tasks of Actuarial Function)</u></p> <p>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>The need to comply with requirements from day 1 of Solvency II implies that this is a necessary part at some point of the preparation.</p> <p>It is up to the undertakings to decide this in line with the distribution of tasks set out in the Solvency II Directive and the Implementing Measures once these are published.</p>
749.	ACA	1.77	To our understanding, and in application of the proportionality principle, smaller undertakings should be allowed to cumulate the actuarial function	The actuarial function cannot be combined

			with other functions, such as CFO. With regards to the responsibility of the calculation and of the validation of the Technical Provisions, what can be considered as a separation of both tasks ?	with any operational functions but EIOPA agrees that proportionality does allow for a combination with non-operational functions. Where validation is performed according to different methods from the calculation of technical provisions there does not need to be a separation of both tasks.
750.	CRO Forum and CFO Forum	1.77	<p>The scope of the actuarial function is overly prescriptive. The explanatory text to Guideline 40, 1.162 lists "The group actuarial function provides advice and an actuarial opinion on: underwriting risks of the group, asset-liability aspects, the group's solvency position, the groups prospective solvency position, ...distribution of dividends in relation to discretionary benefits, underwriting policies, reinsurance arrangements, etc...". This is potentially beyond the scope of responsibilities, which are already clearly established and proven to be effective and efficient within a company or a group. Rather, undertakings should be required to be able to demonstrate which function carries which responsibility.</p> <p>We agree that there could be potential conflicts of interests in case tasks of the first line of defense, e.g. pricing or risk trading activities, are added. It is however unclear what potential conflicts of interests could be in case additional tasks or activities from other key functions of solvency II are added. This should be therefore deleted.</p>	<p>Noted (ET).</p> <p>This is about other operational or control tasks but not additional tasks and activities from other key functions since the latter would be in breach of the Solvency II Directive.</p>
751.	FEE	1.77	The actuarial function interacts with different functions. So, we consider that the independence of actuarial person can be different according to	EIOPA disagrees.

			different tasks.	
752.	Financial Reporting Council	1.77	<p>We agree. However, we recognise that it will often be disproportionate to limit the role of the actuarial function strictly to the tasks required by article 48. For example many insurers will give responsibility to the actuarial function for making recommendations concerning assumptions and methods to be used in calculating technical provisions and also for ensuring the calculations are carried out correctly.</p> <p>An indicator that conflicts of interest are managed appropriately might be adherence to a code of professional conduct and to technical actuarial standards that require transparency of the reporting of results including disclosures concerning risk and uncertainty. Through its code of professional conduct, the Actuaries' Code, the IFoA, overseen by the FRC, requires its members to exercise their professional judgement free from bias and conflicts of interest. The FRC has published technical actuarial standards that require explanation of the methods and assumptions used to calculate technical provisions and to provide information concerning risk and uncertainty.</p>	<p>Noted.</p> <p>Noted.</p>
753.	German Insurance Association (GDV)	1.77	<p>We suppose the objective was to refer to additional tasks or activities to the tasks and activities of persons performing the actuarial function.</p> <p>The explanatory text adds requirements that go beyond the Guideline.</p>	<p>Yes. That is the usual reading of a reference to a key function.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
754.	Groupe Consultatif Actuariel Européen	1.77	<p>1. We welcome the specific requirement on the NCA to ensure that the Actuarial Function is not exposed to conflicts of interest should its scope be increased beyond Article 48 by the undertaking. However, the approach of the NCA also needs to be both appropriate and proportionate to the individual circumstances of the undertaking, for example, to take into account its size and complexity. In particular, small undertakings often have limited actuarial resources which usually cover a variety of roles. Should an NCA not recognise their individual circumstances then they may incur unnecessary costs through unnecessary reorganisation of functions and artificial creation of labour divisions.</p>	<p>Noted.</p> <p>EIOPA has taken this into account in drafting the Guideline.</p>

			<p>2. It would be helpful to specify that this guideline relates to all tasks or activities undertaken by the Actuarial Function, in addition to those listed in Article 48.</p> <p>3. It may also be helpful to specify explicitly that an appropriate and clear segregation of responsibilities is required if the Actuarial Function is both performing and validating the same set of calculations for an undertaking.</p> <p>4. The Actuarial Function, similar to the Internal Audit Function, should be free from undue influence by the AMSB. We recommend that wording similar to paragraph 1.70 is included here i.e. that the Actuarial Function is not subject to influence from the AMSB that can impair its independence and impartiality when performing its responsibilities under Article 48.</p>	<p>“Additional” tasks refer to task in addition to those in Article 48.</p> <p>Please refer to the resolution to comment 749.</p> <p>EIOPA disagrees. Only the internal audit function needs to be fully independent. All other key functions have to be operationally independent. The actuarial function does not have a special status as compared with other key functions.</p>
755.	Institut des Actuaire	1.77	Operational independence may be away from current culture and practice in many countries and non compatible with subordination associated with employment contract under salary base according to national labor law in many countries. Accordingly, the reference to operational independence cannot be enforced, since it has not enough legal base with an “explanatory text” as legal base. As a consequence, if operational independence is a material condition of efficiency, the responsibility devoted to the actuarial function holder cannot be assumed as developed in the CP.	The operational independence is not introduced by the Guidelines or the Explanatory Text; it follows from the Solvency II Directive. It is not incompatible with subordination according to an employment contract.
756.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.77	The need to manage conflicts of interest is an important general point in relation to all governance activities (see our general comment above). Discharge of both calculation and validation tasks does not give rise to a conflict of interest. The first paragraph of Guideline 40 may be deleted.	EIOPA disagrees. The Guideline is not only about calculation and validation and even for that conflicts of interest

				may arise as validation is a control task with regard to the calculation.
757.	Insurance Europe	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 persons performing 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> <p>The explanatory text adds requirements that go beyond the Guideline.</p>	<p>EIOPA disagrees. Anyway, the Guideline also covers the calculation of the technical provisions being given to the actuarial function.</p> <p>Correct.</p> <p>EIOPA disagrees. The potential for overlap is rather limited since most of the tasks of the actuarial functions do not currently exist. Also preparing for a task does not conflict with somebody else currently performing a task.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
759.	Munich Re	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 be in case additional tasks or activities from other key functions of Solvency II are added. This Guideline should therefore be further clarified or deleted.</p>	<p>Please refer to the resolution to comment 757.</p>

760	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.77	<p>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?</p> <p>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).</p>	<p>No, EIOPA considers this Guideline to be sufficient.</p> <p>Noted.</p>
761.	Deloitte Touche Tohmatsu	1.78	<p>The current wording of this paragraph is confusing. Our understanding of this guideline is at group-level there is an assessment resulting in a group-wide opinion on the reinsurance policy and overall reinsurance programme.</p> <p>We propose rewording the paragraph as follows: "In accordance with Article 48 of Solvency II, the national competent authorities should ensure that the actuarial function provides to the administrative, management and supervisory body of each legal entity an opinion on the adequacy of reinsurance arrangements in place. Additionally, in accordance with Article 246 of Solvency II, the national competent authorities should ensure that the administrative, management and supervisory body of the entity responsible for fulfilling the governance requirements at group level is provided with an opinion from the actuarial function on the reinsurance policy and the reinsurance program for the group as a whole."</p>	<p>Noted: the Guideline has been reworded, nevertheless we consider the first sentence expands too much the requirements of the Solvency II Directive.</p>
762.	Groupe Consultatif Actuariel Européen	1.78	<p>It is unclear why this guideline focuses on the provision of an opinion on the adequacy of reinsurance arrangements at group level and does not mention the other requirements of Article 48.</p> <p>Alternatively it could be inferred from this paragraph that the Actuarial Function is required to give opinion on the reinsurance policy at group level and not at solo entity level. This point should be clarified if the intention is that the Actuarial Function opinion on reinsurance policy is required at solo entity level also.</p>	<p>EIOPA wants to highlight this specific task because there is a need for a specific assessment at group level on the issue of reinsurance.</p> <p>It should not be read that the actuarial function at entity level is not required to give an opinion at the level of each entity.</p>

763.	Insurance Europe	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>	<p>Disagree.</p> <p>Noted (ET).</p>
765.	Nordea Life & Pensions	1.78	<p>The reinsurance policy and program are often established for each legal unit and because of that there is no need for making an opinion on a group level by the entity responsible for fulfilling the governance requirements. Refer to comment to 1.22</p>	<p>Noted.</p>
767.	AMICE	1.79	<p>Guideline 41 – Coordination of the calculation of technical provisions</p> <p>It is stated that the actuarial function should identify any inconsistency with the articles of the Directive for the calculation of technical provisions. It would be helpful if EIOPA can provide clarification on the expected tasks and activities of the actuarial function in case of further delays to the Solvency II Directive.</p> <p>We suggest replacing “calculation” by “validation” of technical provisions.</p>	<p>The actuarial function prepares for the tasks it has to perform under Solvency II.</p> <p>The Guidelines reflects the wording used in the Article 48 of the Solvency II Directive to ascribe the task.</p>
768.	CRO Forum and CFO Forum	1.79	<p>We support not to enforce Solvency II Pillar I calculations at this stage</p> <p>See our general remarks on explanatory text – this should be seen as illustrative and not as additional requirements. In particular, it is not clear what the intention of ET 1.164 is in relation to the guideline. and we suggest to delete it.</p> <p>Notwithstanding the above point, ET1.164 requires “the actuarial function uses methodologies that allow for complete analysis regarding those requirements [appropriateness of methodology and data assessments]”. Suggest “complete” is replaced as unreasonable to attain in practice and</p>	<p>Noted.</p> <p>Please refer to “Status of the Explanatory Text” of the Feedback Statement.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>

			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”.	
769.	Deloitte Touche Tohmatsu	1.79	<p>This guideline appears to contradict paragraph 1.9 that states “There is no full framework for technical provisions valuation during this period”. Without a valuation framework supporting Articles 76 to 85, this guideline is impractical. Thus, we propose that undertakings are expected to take appropriate steps toward meeting these requirements.</p> <p>We propose rewording this paragraph as follows: “In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking are taking appropriate steps to enable meeting the requirements set out in Articles 76 to 85 of Solvency II for the calculation of technical provisions.”</p>	EIOPA has changed the wording to take into account how this works slightly differently during the preparatory phase.
770.	ECIROA	1.79	<p>Presently, the actuary is only required to calculate the IBNR and the SCR for reinsurance undertakings. Technical provisions are first calculated by the cedant – based on their own expertise in the matter - and provided to reinsurance undertakings. Given that the initial provisions have already been calculated and certified by an actuary in compliance with SII requirements within the cedantes, it is excessive to replicate these controls at the reinsurance level. Is it thus necessary for the actuary of the reinsurance undertaking to re-control these technical provisions?</p>	<p>Yes, anything else would be non-compliant with the Solvency II Directive.</p> <p>Anyway, the actuary does not “certify” the calculation.</p>
771.	Financial Reporting Council	1.79	<p>We agree that an important role post-implementation of Solvency II for the actuarial function will be to ensure that the calculation of technical provisions is consistent with the requirements set out in Articles 76 to 85. However, we do not agree that it will always be necessary that the actuarial function implements any corrections; rather we understand that the coordinating role should mean that the actuarial function supports the undertaking in ensuring that the corrections are made. We accept that, depending on how the undertaking organises the calculation of technical provisions, it may be appropriate that the actuarial function implements the corrections.</p> <p>However, in the period before the full implementation of Solvency II we</p>	Please refer to the resolution to comment 769.

			<p>consider that it is more important that the AMSB is made aware of inconsistencies so that the insurer can develop plans to implement the necessary corrections in a timely manner. We consider that it may be disproportionate for the insurer to implement corrections immediately. It may also be appropriate to apply a materiality threshold.</p> <p>We therefore suggest that a key role for the actuarial function in the preparation phase for Solvency II is to monitor and report to the AMSB on the implementation by the insurer of its plans to develop the systems and procedures that will enable it to calculate technical provisions consistent with the requirements set out in Articles 76 to 85 of the Directive. In addition, the actuarial function will want to ensure that appropriate testing is carried out to ensure that valuation models are working correctly.</p>	
773.	German Insurance Association (GDV)	1.79	<p>We do not support the enforcing of Solvency II Pillar I calculations at this stage.</p> <p>If EIOPA decides however to take this further, we would 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 85 83 of Solvency II for the calculation of technical provisions and implements identifies and ensures the implementation of corrections as appropriate."</p> <p>On the rationale behind this proposal:</p> <ul style="list-style-type: none"> - Articles 84, 85 deal with requests from NCAs and not with the calculation of technical provisions in it's core. The actuarial function will typically contribute to the processes triggered by such requests. - According to article 48 the actuarial function coordinates the calculation of technical provisions, 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, has to ensure that corrections are implemented as appropriate but will not in general implement the corrections itself. 	Please refer to the resolution to comment 769.

774.	Groupe Consultatif Actuariel Européen	1.79	<p>This guideline appears to impose a different requirement on the Actuarial Function as compared to the other functions to “police” the implementation of Solvency II (also an anomaly in that Solvency II is not in force). Is this the intention of EIOPA?</p> <p>GC would like to assist in more discussions to understand the responsibilities of the AF. In particular if the AF has concerns related to Articles 76 to 85 (or if in opining on pricing or reinsurance the AF has concerns) then it needs to be clear what reporting and action-taking should ensue. The ensuing actions could be internal and / or external to an insurer or group and this has an impact on the contents of the AF Report.</p> <p>We would ask EIOPA to consider the following type of wording to ensure the AF can be effective in its responsibilities :</p> <p>“national competent authorities should ensure that the actuarial function of the undertaking identifies any inconsistency with the requirements...”</p> <p>Replace by</p> <p>“national competent authorities should ensure that the actuarial function of the undertaking has governing powers and adequate resources to identify any inconsistency with the requirements...”</p>	<p>It just looks that way because most of the tasks of the actuarial function are introduced by Solvency II, but the other key functions have a role in the implementation of Solvency II as well.</p> <p>It is expected that investing the key functions with the necessary powers and resources for the performance of their tasks will be sufficiently addressed by the Implementing Measures.</p>
775.	Insurance Association of Cyprus	1.79	<p>We do not agree with the requirement that the actuarial function “identifies any inconsistency with the requirements set out in articles 76-85 of Solvency II”. We believe that undertakings should not be required to comply with Solvency II rules on technical provisions during the preparatory phase. We propose deletion of this guideline.</p>	<p>Please refer to the resolution to comment 769.</p>
776.	Insurance Europe	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 85 83 of Solvency II for the</p>	<p>Please refer to the resolution to comment 769.</p>

			<p>calculation of technical provisions and implements identifies and ensures the implementation of corrections as appropriate.”</p> <p>On the rationale behind this proposal:</p> <ul style="list-style-type: none"> - 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. - 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. <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 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>	
777.	RSA Insurance Group	1.79	We presume that the requirement to identify inconsistencies with the requirements in Articles 76 to 85 will only apply once Solvency II has been implemented.	Please refer to the resolution to comment 769.
779.	CRO Forum and CFO Forum	1.80	We support not to enforce Solvency II Pillar I calculations at this stage	Please refer to the resolution to comment 769.
780.	Financial	1.80	We agree that valuation models should be fit for purpose appropriately	Noted.

	Reporting Council		reflecting the key drivers of the insurer's risks. The FRC has issued a technical actuarial standard on modelling which requires documentation of an explanation of how a model is satisfactory for the purpose for which it is used. It provides principles on how and when to evidence the explanation of how a model is considered to be a satisfactory representation. It requires checks to be performed and documented to determine fitness for purpose. It also provides guidance on how fitness for purpose might be evidenced. We suggest that NCAs might consider monitoring the work of the actuarial function concerning valuation models against similar requirements.	
782.	German Insurance Association (GDV)	1.80	We do not support the enforcing of Solvency II Pillar I calculations at this stage.	Please refer to the resolution to comment 769.
783.	Groupe Consultatif Actuariel Européen	1.80	In this point it states that key drivers of the undertakings risk should be reflected or appropriately addressed in the valuation of technical provisions. However certain key drivers of the undertakings risk may not directly impact technical provisions (e.g. certain types of market risk might not impact non-life technical provisions. We suggest that the wording be amended from "key drivers" to "relevant key drivers".	EIOPA has not taken up your wording suggestion but has changed the wording of the Guideline in a way that should make it much clearer than before that the "relevant" is implied.
784.	Insurance Association of Cyprus	1.80	Undertakings should not be required to comply with Solvency II rules on technical provisions during the preparatory phase.	Please refer to the resolution to comment 769.
785.	Insurance Europe	1.80	We do not support the enforcing of Solvency II Pillar I calculations at this stage.	Noted.
788.	CRO Forum and CFO Forum	1.81	We support not to enforce Solvency II Pillar I calculations at this stage In some cases, instability is a feature of the underlying product that is valued and not of the valuation model itself. This may for example be true for the valuation of options and guarantees in participating life insurance contracts. Therefore the guideline should generally be rephrased in a way that no undue instability in valuation models should be introduced.	Please refer to "Purpose of the preparatory phase" of the Feedback Statement.

789.	Financial Reporting Council	1.81	<p>We agree that stability is a desirable attribute in a model. However, we are uncertain why stability is singled out as an attribute that requires a specific guideline, and we consider there is a risk of confusion between technical stability of the model and an assessment of the inherent risk in the undertaking. We suggest deleting this paragraph.</p> <p>We agree that in the interests of financial stability more generally, the adequacy of technical provisions and capital requirements should not be sensitive to small changes the key parameters used in the valuation models. However, this should not be an end in itself. We consider that it is more important that the actuarial function ensures the AMSB is aware of any material limitations of the models that are used that might have a significant effect on the actual financial outcome and the implications of those limitations.</p> <p>For this reason the FRC includes a requirement in its Technical Actuarial Standard M: Modelling that the actuarial function should explain – in this case to the AMSB - the limitations of the models used and their implications. We also require that that actuarial function is able to explain why the model used is a satisfactory representation in the context of the purpose for which it is being used.</p> <p>In our Technical Actuarial Standard R: Reporting Actuarial Information the FRC includes a principle that the results should always include an indication of uncertainty supported by explanatory as follows:</p> <p>Uncertainty may concern the results of calculations, assumptions on which information is based or other aspects. It may arise from random variations, lack of information or other sources. The extent of any material uncertainty may itself be subject to uncertainty.</p>	<p>EIOPA has removed the Guideline and will include it in the Level 3 Guidelines on the valuation of technical provisions. EIOPA will review whether the wording should be changed.</p>
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791.	German Insurance Association (GDV)	1.81	<p>We do not support the enforcing of Solvency II Pillar I calculations at this stage.</p> <p>If EIOPA decides however to take this further, we propose the following rephrasing:</p> <p>"In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking also provides that the valuation models are stable in the sense that same the parameters will produce the same results not to be equated with small changes in parameters producing small changes in results with respect to small variations introduced in the parameters of these valuation models</p>	Please refer to the resolution to comment 789.
792.	Groupe Consultatif Actuariel Européen	1.81	<p>Additional wording may be required to take into account a situation where the valuation models are inherently unstable owing to the nature of the underlying process being modelled.</p> <p>Suggested change :</p> <p>In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking also provides that, as much as possible, the valuation models are stable with respect to small variations introduced in the parameters of these valuation models.</p>	Please refer to the resolution to comment 789.
793.	Institut des	1.81	"...that the valuation models are stable with respect to small variations	Please refer to the

	Actuaires		introduced in the parameters of these valuation models". "Small" variations have different impacts on the models following the chosen parameters and assumptions. Everything depends on the meaning of small.	resolution to comment 789.
794.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.81	It is not clear how this relates to Article 48 of Solvency II. The intent is unclear and unless it can be explained, the guideline is unnecessary.	Please refer to the resolution to comment 789.
795.	Insurance Europe	1.81	We do not support the enforcing of Solvency II Pillar I calculations at this stage. If nevertheless, EIOPA decides to take this further, we suggest that the guideline is rephrased in a way that no undue instability in valuation models is introduced. 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.	Please refer to "Purpose of the preparatory phase" of the Feedback Statement. Please refer to the resolution to comment 789.
797.	Munich Re	1.81	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. Therefore the Guideline should be rephrased in a way that no undue instability in valuation models should be introduced.	Please refer to the resolution to comment 789.
798	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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 consideration of the undertaking's risk profile rather than the stability of model.	Please refer to the resolution to comment 789.

799.	CRO Forum and CFO Forum	1.82	ET 1.169 requires "sufficient data to enable the implementation of the methodologies and any statistical analysis". While this is ideal in theory, from a practical point of view this will not always be attainable. As noted in our general remarks, the explanatory text should be seen as illustrative and not as additional requirements.	The Explanatory Text is outside the scope of the consultation.
800.	Deloitte Touche Tohmatsu	1.82	<p>This paragraph is vague and we are aware of a number of possible interpretations of the paragraph. For example, is this suggesting that the actuarial function carry out a general comparison of all internal data against external data or comparison of external data against internal data where external data has been chosen to be used?</p> <p>We propose rewording the paragraph as follows: "In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking assesses the sufficiency and quality of the internal and external data used in the calculation of technical provisions. Where relevant, the actuarial function should provide recommendations on internal procedures to improve data quality so as to ensure that the undertaking is a position to comply with the related Solvency II requirement when implemented."</p>	<p>Neither. Both internal and external data (if used) are assessed against Solvency II data quality standards.</p> <p>EIOPA disagrees. But agree with the suggestion to split the Guideline into two sentences and have changed the wording accordingly.</p>
801.	Financial Reporting Council	1.82	We agree that the actuarial function has a role in ensuring data quality and in making recommendations on how data might be materially improved. We note that the actuarial function has a role in recommending improvements to procedures that would improve data quality. While it is implicit that the proportionality principle applies, our experience suggests that accompanying explanatory text reinforcing the point that any recommendation to improve data quality should be proportionate to the anticipated improvement in the reliability of the technical provisions might be useful.	<p>Noted.</p> <p>That has nothing to do with the proportionality principle in the sense of the Solvency II Directive and is not required.</p>

			We suggest that the actuarial function might also report to the AMSB on the implementation of those recommendations.	This will automatically be dealt with one way or another in the next report.
803.	Groupe Consultatif Actuariel Européen	1.82	<p>Suggested change :</p> <p>In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking assesses the consistency of the internal and external data used in the calculation of technical provisions against the data quality standards as set in Solvency II and that the actuarial function provides recommendations, where relevant, on internal procedures to improve data quality so as to ensure that the undertaking is in position to comply with the related Solvency II requirement when implemented. In some case the assessment of external data used (market information, etc) can be relatively difficult. Expert judgment is required.</p>	The suggested additional wording is an explanation and as such cannot be included in the Guideline.
804.	Insurance Association of Cyprus	1.82	<p>We do not agree that undertakings should be required to comply with Solvency II requirements on data quality and technical provisions.</p> <p>Additionally, EIOPA should clarify whether the draft Level 2 text that introduces many detailed requirements on data quality (including a written data policy), is also intended to apply.</p>	<p>Noted.</p> <p>Please refer to " Status of the Solvency II Directive and Delegated Acts" of the Feedback Statement.</p>
805.	Insurance Europe	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</p>	<p>Please refer to " Status of the Solvency II Directive and Delegated Acts" of the Feedback Statement.</p> <p>The Guideline is not</p>

			<p>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 opinion in absence of sufficient data is permissible needs to be included.</p>	<p>contradictory to that view.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
807.	The European Confederation of Institutes of Internal Auditing (ECIIA)	1.82	<p>ECIIA sees here a potential overlap with internal audit tasks, which may lead to double work. Given the Solvency II directive it is a task of the actuarial function to assess the consistency of the internal and external data. EIOPA expands this task by stating that „the actuarial function provides recommendations, ..., on internal procedures to improve data quality ...”. Data quality is one of the most important audit fields for the internal audit function not only in the Solvency II environment and part of nearly every assignment. . Data quality review is intrinsic in each audit assignment, and not only for the technical provisions processes but in all processes of the undertakings (premiums, investments, debts, information, etc.), and it could be included in the General tasks point as our proposal in guideline 37.</p>	<p>The internal audit function assesses a lot that has already been assessed by somebody else. That is ever the case when there is more than one level of controls.</p>
808	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.82	<p>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.</p>	<p>The concept is captured in the data quality standards.</p>
809.	Deloitte Touche Tohmatsu	1.83	<p>We have found no clear basis under Article 48 for an analysis of change to be carried out by the actuarial function. It should be at the discretion of undertakings to decide which function will carry out this analysis and report it to an appropriate committee.</p>	<p>EIOPA disagrees. It is the actuarial function which coordinates the calculation of technical provisions and so it is a logical consequence that this job falls to the actuarial function. The actuarial function reports to the AMSB not</p>

				to any committee.
810.	Financial Reporting Council	1.83	<p>We consider that this part of the guideline sits rather oddly within a guideline concerning data – it considers differences in outputs rather than inputs. While it is possible that differences in data quality from one valuation to the next may be the cause of differences in technical provisions there may be other causes</p> <p>We agree that the actuarial function should compare technical provisions from one valuation date to the next and be able to reconcile any difference. We have included such a requirement in our technical actuarial standards on reporting.</p> <p>However, we suggest that this requirement is better included under guideline 44 which considers testing against experience. We consider that the reasons for differences are more likely to arise because assumptions are not borne out in practice or the valuation models are inadequate rather than purely data quality although we accept that poor data quality may lead to poor assumptions or inadequate models.</p>	<p>EIOPA has moved the Guideline to Guideline 41.</p> <p>Noted.</p>
811.	German Insurance Association (GDV)	1.83	<p>This Guidelines seems not to be consistent with draft Level 2 accordingly to which the actuarial function should “compare and justify any unusual differences in the calculation of technical provisions from year to year”</p>	<p>EIOPA has inserted the word “material” which clarifies the word “unusual”.</p>
812.	Groupe Consultatif Actuariel Européen	1.83	<p>This task is one of the main tests on the technical provisions and is not necessarily connected with data quality. It might be more appropriate to include this as a separate guideline.</p> <p>This point referring to technical provisions looks unusually placed in this section and would seem better placed in guideline 44 (“Testing against experience”) if it is to remain.</p> <p>Data quality is a big issue facing large insurers operating across territories and perhaps an alternative point could follow up on 1.82 requiring a</p>	<p>Agree. EIOPA has moved the Guideline.</p> <p>Noted.</p>

			<p>quantitative assessment of any data improvements since the last valuation exercise.</p> <p>Furthermore, we suggest the following wording change :</p> <p>In accordance with Article 48 of Solvency II, national competent authorities should ensure that, if there are any significant differences amongst the technical provisions for different valuation dates, the undertaking ensures that the actuarial function presents an explanation for the deviations.</p>	<p>EIOPA has changed the wording in a way that should serve the purpose of the wording change you suggest.</p>
813.	Institut des Actuaire	1.83	<p>1.83 seems inappropriate for insurers whose function is to reassess risks and reserves as a continuous process. It would more appropriate that the AMSB makes sure that the actuarial function manages the evolution of the technical provisions.</p>	<p>EIOPA disagrees. The actuarial function provides the actuarial advice, the responsibility for the final decision is with the AMSB.</p>
814.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.83	<p>This could be much more clearly worded as:</p> <p>In accordance with Article 48 of Solvency II, national competent authorities should ensure that the undertaking ensures that the actuarial function reports on the effect of changes in data, methodologies or assumptions on the amount of technical provisions.</p> <p>Alternatively it could be deleted.</p>	<p>Agree. EIOPA has changed the wording to take your suggestion into account.</p>
815.	Insurance Europe	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 material differences in the calculation of technical provisions from year to year"</p>	<p>Please refer to the resolution to comment 811.</p>
817.	Munich Re	1.83	<p>There is no direct link to data quality issues. 1.83 should be included as a separate Guideline.</p>	<p>EIOPA has moved the Guideline.</p>

818	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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 different valuation dates (...) ' 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>	Please refer to the resolution to comment 814.
819.	CRO Forum and CFO Forum	1.84	<p>We support not to enforce Solvency II Pillar I calculations at this stage</p> <p>In practice, the Profit & Loss Attribution will be one of the key sources of information or analysis.</p> <p>ET 1.172 states that "proposals to change assumptions and to modify valuation models in order to improve best estimates have to be evidence-based". This statement should be seen as illustrative (as noted in the general remarks in respect of all explanatory text) and could be relaxed to permit consideration of other, more subjective "evidence" e.g. emerging actuarial leading-practice, expert judgment and research. Suggest "proposals to change assumptions and to modify valuation models in order to improve best estimates have to be justified, for example with reference to evidence-based analyses. Unsupported or arbitrary changes in modelling should not be permitted</p>	<p>Noted.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
820.	ECIROA	1.84	<p>Could you detail further what you consider as a "material deviation" between projection and real?</p>	EIOPA has no intention to do so.
821.	Financial Reporting Council	1.84	<p>We consider this guideline is unnecessary as the Directive already requires the comparison of actual experience against the assumed best estimate to be performed by the actuarial function (article 48(1)(d)). The actuarial function is required to report to the AMSB on the work performed including identifying any deficiencies, which might include materially inappropriate assumptions, and giving recommendations on remedying those deficiencies.</p>	<p>This is a specification of the text of the Solvency II Directive which EIOPA considers relevant. The Guideline has been removed removed for the preparatory phase but is supposed to be</p>

			<p>We also consider that it may be disproportionate to identify all the causes of any deviations and so the work of the actuarial function should be limited to identifying the material causes of the deviations identified.</p> <p>However, given our comment on paragraph 1.83, the guideline might be replaced by a a requirement to explain material deviations from one valuation to the next.</p>	<p>reinserted for the final Level 3 Guidelines.</p> <p>EIOPA has changed the wording in a way that should serve the purpose of the wording change you suggest.</p>
823.	German Insurance Association (GDV)	1.84	We do not support the enforcing of Solvency II Pillar I calculations at this stage.	Noted.
824.	Groupe Consultatif Actuariel Européen	1.84	<p>No frequency for the assessment is advised here. What frequency does EIOPA suggest to be appropriate?</p> <p>It is not clear how this point differs from 1.83. Does this point imply more than an actual versus expected analysis over many consecutive valuation dates?</p> <p>Testing against experience takes on very different forms in different types of insurers. For example a comparison of actual versus assumed non-life claims in a run-off – takes a very different form to comparing actual versus expected economic ‘market’ assumptions – and another different example would be comparing of actual versus expected sickness or mortality rates. It is dangerous to generalise in this area, therefore.</p>	<p>EIOPA does not intend to suggest a frequency.</p> <p>It is up to the undertakings to justify the frequency chosen as appropriate.</p> <p>Yes, and that is not the only difference.</p> <p>Noted.</p>
825.	Insurance Association of Cyprus	1.84	Undertakings should not be required to comply with Solvency II rules on technical provisions during the preparatory phase. We propose deletion of this guideline.	Noted.
826.	Insurance Europe	1.84	We do not support the enforcing of Solvency II Pillar I calculations at this stage.	Noted.

			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	The Explanatory Text is outside the scope of the consultation.
828.	Nordea Life & Pensions	1.84	Clarify that this only refers to Technical Provisions	The reference to "best estimate" is sufficient clarification.
830.	CRO Forum and CFO Forum	1.85	The explanatory text for Guideline 45 appears to infer the requirement will be for the actuarial team to do work independently from the underwriting or reinsurance teams. The subject of the reinsurance and underwriting opinions and the actuarial function is an area where there currently appears little consensus, whether from actuarial professions, industry or regulatory bodies on what is required. As with all explanatory text, this should be seen as illustrative rather than a requirement. In addition it should be up to firms to organize themselves as they best see fit, with the goal of avoiding duplication/overlap of responsibilities.	The Explanatory Text is outside the scope of the consultation.
831.	Deloitte Touche Tohmatsu	1.85	This paragraph is unclear, and we request clarification on the expectations of the actuarial function in relation to consideration of the interrelations between an undertaking's reinsurance arrangements, its underwriting policy and the technical provisions.	EIOPA changed the wording to clarify that in giving an opinion on the underwriting policy and the reinsurance arrangements the effect of these on the technical provisions is to be taken into account.
832.	DIMA (Dublin International Insurance & Management	1.85	Given consideration of the interrelations is such an innate necessity for the actuarial function and will be performed automatically, evidencing it is happening would be an unhelpful and inefficient exercise, and one that potentially could be a burdensome distraction.	EIOPA disagrees.

833.	Financial Reporting Council	1.85	<p>We suggest that EIOPA reconsider the information that might be reported in the opinions in order to ensure the requirements are proportionate. We accept that these opinions might be seen as a new role for actuaries, especially in general insurance, and therefore it is helpful both to insurers' AMSBs and to practitioners to provide guidance on what is expected from these opinions.</p> <p>However, we are concerned that the supporting explanatory text and what is likely to be required by level 2 regulations are too prescriptive.</p>	<p>Noted.</p> <p>The Explanatory Text is outside the scope of the consultation.</p>
835.	German Insurance Association (GDV)	1.85	<p>In unclear to which tasks the Guideline is referring to.</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>Please refer to the resolution to comment 831.</p> <p>EIOPA does not disagree but the purpose of the Guideline is to clarify the connection between different tasks assigned to the actuarial function by the Solvency II Directive.</p> <p>The Guideline does not elaborate on what giving an opinion on the adequacy of the reinsurance arrangements means.</p>
836.	Groupe Consultatif Actuariel Européen	1.85	<p>We welcome the extended guidance contained in the explanatory text on the interrelationship between an undertaking's technical provisions, reinsurance arrangements and underwriting policy and note that the list of components affecting an opinion is relevant and sufficiently wide-</p>	<p>Noted.</p>

			<p>ranging. However, the guidance should clarify that the explanatory text is not a comprehensive list of factors to consider and the Actuarial Function will need to consider the wider picture in addition to undertaking specific factors.</p> <p>We welcome the explanatory text which recognises that the Actuarial Function will need to consider alternative underwriting and reinsurance policies in formulating its opinion. This oversight and additional input role is a key value of the Actuarial Function to an undertaking and the current wording appears to be sufficient to ensure the Actuarial Function can fulfil a guidance role.</p> <p>There may be some elements which are already dealt with within another area of a company, rather than by the AF, such as the reinsurance, underwriting and risk management functions. To include such functions to the extent envisaged by the guidance could create a risk of departing from the intent of the Solvency II Directive. This intent should be at the core of the Guideline's intended impact.</p>	<p>Check ET to see whether the list being open can be clarified.</p> <p>Noted.</p> <p>EIOPA generally drafts Guidelines and Explanatory Test with a view of clarifying the intention of the Solvency II Directive.</p>
837.	Insurance Europe	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. We therefore suggest that this</p>	<p>Noted.</p> <p>Please refer to the resolution to comment 831.</p>

			matter is excluded from the Guidelines until further consensus has developed and/or further guidance is issued.	
838.	International Underwriting Association of London (IUA)	1.85	It does not appear necessary to specify a function which is inherent to the actuarial role.	The Guideline is about the role of the actuarial function – which is a new concept – not about the actuarial role.
839	Lloyd’s	1.85	<p>We propose that Guideline 45, as well as the relevant section of the Explanatory Text, are excluded, for the reasons set out below.</p> <p>Guideline 45 goes beyond the requirements of Directive Article 48 by looking at the interrelations between underwriting, reinsurance and technical provisions. The Article requires the actuarial function to express an opinion on the underwriting policy and reinsurance arrangements, nothing more. This is an area where there is currently little consensus in the actuarial professions or industry on what should be required.</p> <p>Although not strictly part of the consultation, parts of the Explanatory Text appear to raise expectations way beyond the requirements. Examples are:</p> <p><i>“The skills and experience of the actuarial function can provide a different perspective from the underwriters’ or reinsurance teams’ perspectives”</i> – this assumes that the members of the actuarial function have different skills and experience from members of the underwriting team – we would expect actuaries with pricing experience to be core in both and so this indicates that non-pricing actuaries will be expected to opine on underwriting policy. This does not make sense or seem appropriate.</p> <p><i>“The opinions on the underwriting policy and reinsurance arrangements include, when necessary, recommendations regarding appropriate strategies to be followed by the undertaking in this matter.”</i> – it is very much beyond the scope (and possibly skill set) of the actuarial function to be recommending appropriate strategies for the underwriting of a firm.</p>	<p>EIOPA disagrees. It was on account of this interrelationship that (g) and (h) were included in Article 48 (1).</p> <p>The Explanatory Text is outside the scope of the consultation.</p>

			<p><i>"The opinions of the actuarial function on the overall underwriting policy and reinsurance arrangements need to include descriptions and examinations of other possible options."</i> – again, to expect the actuarial function to provide description and examination of alternative underwriting (and reinsurance) policies places far higher expectations on the function than the Directive or what is practically possible.</p> <p>These all confirm that the expected role of the actuarial function appears mis-interpreted and goes beyond Directive requirements in respect of underwriting and reinsurance opinions. This supports the suggestion that the guidelines should be silent on these issues until further clarification and consensus is reached.</p>	
841.	Aon Ltd	1.86	<p>The following words appear to be vague:</p> <p>„in particular with regard to the risks relating to the terms on which business is written and how dependencies between risks are derived”</p>	EIOPA has changed the wording.
842.	CRO Forum and CFO Forum	1.86	<p>Guideline 46 refers to the actuarial function contributing to the assessment of risk and specifically "...the risk relating to the terms on which business is written and how dependencies between risks are derived." This appears to extend well beyond what the actuarial function's remit would be expected to be. For example, dependencies are not mentioned in the level 1 or draft level 2 text in this context at all. It would be more appropriate for the underwriting teams to consider the "terms on which business is written". We propose that this guideline is deleted.</p>	EIOPA disagrees but has changed the wording.
843.	FEE	1.86	<p>The sharing of responsibilities between the actuarial and risk functions has not received any significant further clarification. So, maybe, the smaller companies may have expected more information about the degree to</p>	Please refer to "Key functions" in the Feedback Statement.

			which it is acceptable to combine certain roles or functions.	
844.	Financial Reporting Council	1.86	<p>We agree. As the explanatory text suggests, the actuarial function can make a valuable contribution to the development and maintenance of an internal model through:</p> <ul style="list-style-type: none"> a) the design of the model using knowledge of the underwriting risk; b) assessment of data quality given the actuarial function's responsibility for data concerning the calculation of technical provisions; c) assessing the level of complexity required of the model; d) modelling of underwriting risks and ensuring consistency of assumptions between those used to determine technical provisions and the SCR; e) validation, for example comparing actual and expected results given the requirement to do this for technical provisions; and f) as a user of the internal model able to provide feedback on the model to improve it. 	Noted.
846.	German Insurance Association (GDV)	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>We propose that this Guideline is deleted.</p>	The Guidelines does not require or imply that there is a review – formal or otherwise – of the tasks of the risk management function.
847.	Groupe Consultatif Actuariel Européen	1.86	<p>1. We welcome the recognition here that the AF is likely to make major contributions to development of the internal model. This guideline is slightly confusing however in stating that the opinion of the risks covered by the internal model should be based upon a technical analysis and should reflect the experience and expertise of the function. Different actuarial functions in different territories and within different undertakings in a territory will have different levels of experience and expertise. In addition, Guidelines 11 and 13 have some flexibility in how the fit and proper requirements are met. Both this and the potentially different interpretations by NCAs in the level of these requirements may result in</p>	Noted.

			<p>substantially different standards of analysis being undertaken for the Actuarial Function to fulfil this guideline. More objective standards may better meet the consistency aim of the guidelines in this instance.</p> <p>2. We would note that there is unlikely to be sufficient data and information available to enable a robust derivation and justification of tail risk dependencies. This could be acknowledged in this paragraph, perhaps by citing reference to expert judgment and / or other appropriate benchmarks.</p>	<p>The Guidelines does not have a consistency aim.</p> <p>The Guidelines is about the role of the actuarial function not about how its tasks are to be performed.</p>
848.	Insurance Europe	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>	Please refer to the resolution to comment 846.
849	Lloyd's	1.86	<p>We propose that Guideline 46 is deleted.</p> <p>It refers to the actuarial function contributing to the assessment of risk and specifically "<i>...the risk relating to the terms on which business is written and how dependencies between risks are derived.</i>"</p> <p>This extends well beyond expectations of the actuarial function's remit. For example, dependencies are not mentioned in the Directive or draft level 2 text in this context at all. It is more appropriate for an undertaking's underwriting teams to consider the "<i>terms on which business is written</i>".</p>	Please refer to the resolution to comment 841.
	Powszechny Zakład	1.86	Scope of co-operation between actuarial and risk management functions should be addressed further, in particular where internal model	Please refer to "Key Functions in the

	Ubezpieczeń Spółka Akcyjna		<p>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>	<p>Feedback Statement.</p> <p>According to Article 44 (5) of the Solvency II Directive the latter is clearly not possible.</p>
850.	RSA Insurance Group	1.86	This is unduly prescriptive. Undertakings should decide for themselves the extent to which the Actuarial Function is involved with the Internal Model.	EIOPA disagrees. The Solvency II Directive prescribes certain tasks with regard to the internal model to the risk management function. This distribution of tasks cannot be changed by the undertaking. The Solvency II Directive also requires that the actuarial function contributes to the internal model so this is mandatory for the undertaking as well. This contribution should be within the area of expertise of the actuarial function.
852.	ACA	1.87	To avoid excessive administrative charges, this report should be, if not identical, at least based on current local regulation (actuarial report).	
853.	Aon Ltd	1.87	"All tasks" does not reflect materiality.	EIOPA has changed the

				wording.
854.	Association of Financial Mutuals	1.87	The requirement to report "all tasks" seems unnecessarily onerous, and is probably not required. We would suggest clearer wording here.	Please refer to the resolution to comment 852.
855.	CRO Forum and CFO Forum	1.87	<p>Annual internal report to the administrative, management or supervisory body- "In accordance with Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking produces a written report to be submitted to the administrative, management or supervisory body, at least annually. The report should document all tasks that have been undertaken by the actuarial functions and their results, and clearly identifies any deficiencies and gives recommendations as to how such deficiencies could be remedied".</p> <p>Requirement to prepare a single consolidated report for submission to the AMSB is potentially very onerous and may not in all case be fit for purpose; the option to provide a series of sub-reports over the year in documented format is most appropriate, rather than a single report should be permitted, and for purposes of external submission to supervisor, simply composed of a consolidated set of these sub-reports presented to the internal administration bodies. The producers of these reports should not need to be the same person/function e.g. sub-reports could be submitted by actuarial, underwriting, reinsurance functions depending on particular item(s) being addressed.</p> <p>It is important that proportionality can be exercised also in the report of the actuarial function to avoid additional reporting of topics already reported via other reports, e.g. RSR, ORSA,</p>	Agree. EIOPA has changed the wording too clarify the point.
856.	Deloitte Touche Tohmatsu	1.87	<p>Is it expected that this will be reported in a single report or as a series of reports throughout the year? Many of these tasks are currently not carried out at the same time.</p> <p>We propose rewording the paragraph as follows: "In accordance with</p>	Agree. EIOPA has changed the wording to clarify that no single report is required.

			Article 48 of Solvency II, national competent authorities should ensure that the actuarial function of the undertaking produces a written report or series of reports to be submitted to the administrative, management or supervisory body, at least annually. The report should document all tasks that have been undertaken by the actuarial functions and their results, and clearly identifies any deficiencies and gives recommendations as to how such deficiencies could be remedied.”	
857.	FEE	1.87	It could be anticipated that the actuary would propose one or more time periods within which the insurer could remedy the deficiency. In this case, the text of Paragraph 1.87 should be aligned with that of Paragraph 1.75.	Such a proposal is possible, but EIOPA does not consider it a requirement.
858.	Financial Reporting Council	1.87	We agree. Our TASs require that users of actuarial information are given most of this information. We suggest that in order to keep reports manageable the reporting requirements should be limited to material matters. In this context, we define material as having an impact the AMSB’s decision making.	Noted. Please refer to the resolution to comment 853.
860.	Groupe Consultatif Actuariel Européen	1.87	<p>We welcome the requirement for an actuarial report to be submitted the AMSB, at least annually, as this provides a clearly-defined opportunity for a consolidated and risk-focussed opinion to be provided to the key decision makers of the AMSB. A subsidiary point is whether there should be guidance in a situation where past recommendations have not been implemented by the AMSB and these have had a material impact on the undertaking and / or are still a noted deficiency. Then the Actuarial Function could be expected to refer to this issue, cite the reasons provided to the Actuarial Function as to why the recommendations were not acted upon in the past, and highlight the possible consequences of further inaction.</p> <p>We have concerns about the phrase “should document all tasks and their results” as this seems to be much too comprehensive. There needs to be some consideration of materiality and expert judgement on the part of the persons carrying out the actuarial function as to what is reasonable to report on, including whether they are pertinent to the tasks required of the AF under Article 48.</p> <p>In our view there is considerable variation (across countries and types of</p>	<p>Noted.</p> <p>Please refer to the resolution to comment 853.</p> <p>Noted.</p>

			<p>insurers) in the readiness of actuaries / insurers to deliver this type of report. In some cases (e.g. large life insurers in some countries) this functionality already exists – but this isn't universally the case (e.g. in non-life insurers it is less frequent that actuaries opine always on pricing and reinsurance). The ethos of the GC is to assist in the development of more professionals to deliver in these areas of insurer governance.</p> <p>To that end the Groupe Consultatif is developing a draft model standard of actuarial practice on the actuarial report required in this guideline. The purpose of the standard would be to reinforce the message of quality inherent in having the actuarial function carried out by qualified actuaries who are members of the Groupe Consultatif. (Also it is guidance that could be followed by non-members of Groupe Consultatif's member associations.) The guideline will help to ensure consistent, efficient and effective practices across insurance and reinsurance undertakings in the European Union in regard to reporting by the actuarial function. It will help intended users of this report to place a high degree of the reliance on the information produced by actuaries in these positions. In our view there is considerable variation (across countries and types of insurers) in the way governance already functions and this type of report may institute a source of progress in the governance of undertakings.</p>	Noted.
861.	Insurance Europe	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>Noted.</p> <p>That depends on when the actuarial function was or is established.</p> <p>Please refer to the resolution to comment 856.</p> <p>There may be a requirement according to national law to submit an "actuarial</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,	report" to the NCA. But for the Solvency II actuarial reporting there is no such requirement.
863.	MGM Advantage	1.87	The requirement to report "all tasks" seems unnecessarily onerous, and is probably not required. Better wording should be used.	Please refer to the resolution to comment 853.
864.	Munich Re	1.87	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 etc.	Please refer to the resolution to comment 861.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	1.87	In our opinion, identification of 'any' deficiencies may not be possible or the cost may exceed the 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.	The report identifies deficiencies already discovered, so the requirement is not to detect any deficiencies. In the reporting to the AMSB it is implied that deficiencies that are too minor to be relevant are not included.
865.	ROAM- Réunion des Organismes d'assurance mutuell	1.87	Ajouter dans le titre "Annual internal ACTUARIAL report to the AMSB"	EIOPA changed the title in a different way, the word "actuarial" is however now included.
867.	BIPAR – European Federation of Insurance Intermediaries	Chapter IX General Comments	BIPAR takes due note of the clarification in point 1.205 of the explanatory text, accompanying guideline 49, that insurance mediation activities are excluded from the scope of the outsourcing article 49. We understand that when an intermediary is given the authority to settle claims or underwrite business, the outsourcing requirements can be applied, be it in a proportionate way.	The Explanatory Text is outside the scope of the consultation. However, for Guideline 49 please refer to "Outsourcing of underwriting" of the

			<p>When for example an intermediary has a very limited claims settlement mandate given by a large, multi-branch insurance company, this could be subject to less formalities than an intermediary who would have an important mandate by a niche insurer in a niche branch.</p> <p>From the same proportionality perspective that is embedded in the guidelines, we believe that if an intermediary can hand out a temporary cover note, this should not per se qualify as outsourcing.</p> <p>BIPAR is of the opinion that, in order not to be over prescriptive, the guidelines should remain as high level as possible and focus on the outcomes/desired results, rather than on the tools which can lead to the results.</p>	<p>Feedback Statement.</p> <p>The purpose of the Guidelines, and in particular of the paragraphs 1.204 and 1.205 of the Explanatory Test (accompanying Guideline 49), is just to identify the activities subjected and not to Solvency II outsourcing requirements. It seems clear that functions and activities identified in paragraph 1.205 are those merely auxiliary to carrying out the main activities.</p>
868.	CRO Forum and CFO Forum	Chapter IX General Comments	Generally, guidelines are clearly described and understood. Further clarification on scope might be useful, i.e. applicability only for new contracts or all existing? In some points we consider the requirements as overly burdensome, e.g. the requirement of business contingency plans including exit strategies.	Please refer to "Scope of outsourcing" of the Feedback Statement.
869.	Insurance Europe	Chapter IX General Comments	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.	Please refer to the resolution to comment 868.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	Chapter IX General Comments	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	EIOPA does not see any potential for regulatory arbitrage.

			<p>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.</p>	<p>For the proportionality principle please refer to "Principle based approach and proportionality principle" of the Feedback Statement.</p> <p>For the scope of outsourcing please refer to "Scope of outsourcing" of the Feedback Statement.</p>
870.	Aon Ltd	1.88	<p>This requirement may be better placed if it was included as a principle in the Outsourcing Policy section (guideline 51).</p>	<p>Agree.</p> <p>The aspect is very important and crucial for the outsourcing; for this reason it must have its own and independent reference, also to have a guidance as homogeneous as possible.</p> <p>EIOPA has changed the wording to introduce this aspect in the written policy through a cross reference.</p>
871.	BIPAR – European Federation of Insurance	1.88	<p>See general comments above</p>	<p>Please refer to the resolution to comment 870.</p>

	Intermediaries			
872.	CRO Forum and CFO Forum	1.88	The definition of critical or important operational function is workable (positive)	The definition is also in line with MIFID Directive. (EBA uses "Material activity", but the sense is quite the same).
873.	FEE	1.88	<p>We would like to ask for more clarity regarding the implication of criteria "this function is essential" within Paragraph 1.88 which addressed "critical or important function".</p> <p>It appears that it is implied, but not explicitly stated in the Introduction to the Guidelines, that similar proposals/adopted requirements of the European Banking Authority and the International Association of Insurance Supervisors have been taken into account. If that happened, and (a level of) consistency has been achieved, the adopted guidelines should state that fact.</p>	<p>Please refer to the resolution to comment 872.</p> <p>Going into too much detail is not within the spirit of the Guideline, taking also into consideration that the national specificities can be different.</p> <p>The statement "this function is essential" wants to clarify when defining a function or activity "critical or important".</p>
875.	German Insurance Association (GDV)	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 to change the title of the guideline in 'critical or important function or insurance-specific activity'.</p> <p>Outsourcing should be limited to insurance and reinsurance activities. This is in line with art. 38 and art. 49 Solvency II Framework Directive.</p>	<p>Agree.</p> <p>EIOPA has changed the wording of the title including "activity".</p> <p>The sense both of Guideline and</p>

			Otherwise there may be a possible violation of the principle of proportionality when applying these provisions to all outsourcing activities of the undertaking.	Explanatory Text is oriented towards insurance and reinsurance activities, respecting the proportionality principle and take into consideration the content of the Solvency II Directive.
876.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.88	Something seems to be missing from Guideline 48 – should it follow that there should be some sort of contingency planning in relation to a breakdown of critical or important outsourced functions?	The aspect is included in Guideline 51 and in particular in the paragraph 1.214 of the Explanatory Text.
877.	Insurance Europe	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 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.</p> <p>We welcome the definition of critical or important operational function which is workable.</p>	<p>Please refer to the resolution to comment 875.</p> <p>Please refer to the resolution to comment 872.</p> <p>Noted.</p>
878	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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?	It would be possible for NCAs to do this, but they are not obliged to do so.
879.	ROAM-	1.88	Annuler dans ligne 3 ` `on the basis of' qui apporte de la confusion.	EIOPA considers the aim

	Réunion des Organismes d'assurance mutuell			of the Guideline to be clear enough.
881.	BIPAR – European Federation of Insurance Intermediaries	1.89	See general comments above	Please refer to the resolution to comment 867.
882.	CRO Forum and CFO Forum	1.89	<p>As noted in the general remarks, we would welcome the introduction of a reference to the IMD (Insurance Intermediaries Directive) in the guideline.</p> <p>So we suggest adding: “.....intermediary is subject to the outsourcing requirements for activities not subject to IMD”</p>	<p>Please also refer to “Outsourcing of underwriting” of the Feedback Statement.</p> <p>Please refer to the second part of the resolution to comment 875.</p> <p>Referring to the concept of brokerage, it is important to clarify that brokerage is always governed by the IMD Directive (Insurance Intermediary Directive) and the Guideline just wants to extend the outsourcing principle to undertakings that outsource their main activities to other subjects, carried out on behalf of the insurance undertaking.</p>
883.	Deloitte	1.89	This paragraph suggests early adoption of Solvency II, as applying the	Please also refer to

	Touche Tohmatsu		<p>outsourcing requirements could potentially result in changes to contractual terms. We propose softening this requirement to ensure that undertakings are taking appropriate actions to be prepared for Solvency II.</p> <p>We proposed rewording the paragraph as follows: "In accordance with Article 49 of Solvency II, national competent authorities should ensure that, when an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an insurance undertaking, the undertaking is taking appropriate steps with its intermediary to be prepared for the outsourcing requirements."</p>	<p>"Scope of Outsourcing" of the Feedback Statement.</p> <p>EIOPA gives clarifications on this aspect directly in the Feedback Statement.</p>
884.	French Federation of Insurance Companies (FFSA)	1.89	<p>In 1.205 of explanatory text, "activities of concluding and claim settlement" are not subject to outsourcing requirements.</p> <p>In guideline 49, underwriting and claim settlement by intermediary in the name of the insurance undertaking are subject to Solvency II and outsourcing requirements.</p> <p>So, there is a lack of clarity between paragraph 1.205 of explanatory text and guideline 49 regarding claim settlement and underwriting activities.</p> <p>It is not possible to "escape of outsourcing requirements when underwriting and claim settlement are carried out by intermediaries".</p>	<p>The Explanatory Text is outside the scope of the consultation.</p> <p>Please refer to the resolution to comment 867.</p> <p>In paragraph 1.205 are indicated, as examples, activities merely auxiliary to the main ones.</p> <p>Please also refer to "Outsourcing of underwriting" of the Feedback Statement.</p>
885.	Insurance Europe	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 test appear relevant. So we suggest adding: ".....intermediary is subject to the outsourcing requirements for activities not subject to IMD"</p> <p>The meaning of " subject to outsourcing requirements", is unclear, namely</p>	<p>Please also refer to "Outsourcing of underwriting" of the Feedback Statement.</p>

			<p>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>	
886	Lloyd's	1.89	<p>The reference to "...outsourcing requirements" at the end of this paragraph is unclear. We assume that it refers to the requirements set out in this Chapter. If it is intended to refer to the full outsourcing requirements set out in the Directive and the draft level 2 measures, this would require the Guidelines to be redrafted. It would also mean the full set of requirements applying to underwriting only, not to other critical or important operational functions.</p>	<p>The "outsourcing requirements" refers to all outsourcing requirements otherwise the Guideline would have referred to "the outsourcing requirements of this Chapter". EIOPA does not understand why a redrafting of the Guideline should be necessary. The full set or requirements applies to underwriting and claims handling where these meet the definition of outsourcing. The full set of requirements applies to any critical or important operational function or activity being outsourced, however the aim of the Guideline is to stress that where activities fall under the IMD this does not automatically exclude the self same activities from falling</p>

				under the outsourcing requirements of the Solvency II Directive.
887.	Polish Chamber of Insurance	1.89	It is critical to confirm that the undertaking is not obliged to continuously verify the fit and proper requirements regarding intermediaries, i.e. to confirm that insurance intermediary is not a person underwriting the risks unless is given such authority. Such clear guidelines would enable to put precise wording into the national law on fit and proper requirements.	The intermediary Directive gives indication on these aspects and in addition the National provisions define Fit & Proper requirements.
	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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?	Not generally. As the GL states this is only the case where the underwriting meets the definition of outsourcing, i.e. where an intermediary acts in the name and on behalf of the undertaking and thus has the final decision as to whether the undertaking enters into an insurance contract.
888.	ROAM- Réunion des Organismes d'assurance mutuell	1.89	Nous nous interrogeons sur la notion de « claims settlements » : S'agit -il du simple règlement de sinistre ou s'agit-il du traitement d'une réclamation suite à règlement de sinistre ?	The claim settlement process involves several activities; who runs the business as a whole, in the name and on behalf of the company, is subject to the provision of the Guideline. (The Explanatory Text helps to clarify the aspect)

890.	AMICE	1.90	Add to c) The word "Relevant" before "financial market environment"	The comment refers to paragraph 1.50: EIOPA disagrees. The consideration first has to be general to decide what is relevant.
891.	BIPAR – European Federation of Insurance Intermediaries	1.90	See general comments above	Please refer to the resolution to comment 867.
892.	CRO Forum and CFO Forum	1.90	The definition of key function being outsourced intra-group, i.e. allowance for Group to determine (and document) governance setup of key functions is sensible (positive).	Noted.
893.	DIMA (Dublin International Insurance & Management	1.90	It should be the undertaking receiving "outsourced" intra-group services that ensures the key functions are not impaired and not the entity responsible for group governance requirements.	
894.	Insurance Europe	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>	The concept seems enough clear (in the Guideline and in the Explanatory Text), in particular in paragraph 1.216. The parent company, in fact, is responsible in the group for the definition of the group policies, including the ones for outsourcing and for key functions, but the responsibility of the outsourced activity remains with the undertaking that

				<p>outsources the function or activities. The aspect is made clearer in paragraph 1.216 of the Explanatory Text.</p> <p>The national legislation can, in the application phase of the Guideline, explain or point out the concept better, taking into consideration the national specificities.</p>
897.	AMICE	1.91	<p>Guideline 51 – Outsourcing written policy</p> <p>The requirement that the outsourcing written policy discloses the details to be included in the written agreement with the service provider should be further clarified. Further clarification is also needed as to whether the outsourcing requirements would also be applicable to existing contracts.</p> <p>We would suggest the term “details” is replaced by “key information”.</p>	<p>The purpose of the Guideline is to give general issues to the different Member States in order to give a common orientation.</p> <p>It is clear that the goal is a progressive alignment to the Guidelines. In the sense that the new outsourcing contracts and new policy will follow Solvency II Directive requirements. The existing ones will have to adapt in the process of renewal.</p> <p>The gradual application will be implemented by the Member States in the process of national adoption of Solvency II</p>

				Directive.
898.	BIPAR – European Federation of Insurance Intermediaries	1.91	See general comments above	Please refer to the resolution to comment 867.
899.	CRO Forum and CFO Forum	1.91	<p>The explanatory text for this guideline indicates that any sub-outsourcing of critical or important functions needs to be approved by the undertaking. In practice this requirement will be onerous to apply for existing outsourcing arrangements. As noted in the general remarks, the explanatory text should be seen as illustrative rather than additional requirements. More practical guidance would be that regardless of any sub-outsourcing of activities/functions, the undertaking remains fully responsible for the activity/function performed.</p> <p>Furthermore, it is unclear whether outsourcing requirements would be applied to existing contracts</p>	<p>The Explanatory Text is outside the scope of the consultation.</p> <p>Please also refer to “Status of the Explanatory Text” and “Scope of outsourcing” of the Feedback Statement.</p> <p>It is important to take into account that the responsibility of the function or activities remains for the undertaking itself. For this reason it is important to consider a provision that assures some kind of control procedures.</p>
900.	Deloitte Touche Tohmatsu	1.91	In order to be consistent with paragraph 1.36, we proposed the addition of sub-paragraph d.: “the roles and responsibilities of the individual designated with overall responsibility for the outsourced key functions.”	This is covered by Guideline 9 which covers general content necessary for all policies.
902.	German	1.91		

	Insurance Association (GDV)			
903.	Insurance Association of Cyprus	1.91	We suggest that EIOPA includes a statement that this guideline will not apply to already existing outsourcing agreements during the preparatory period.	Disagree. Please also refer to "Scope of outsourcing" of the Feedback Statement.
904.	Insurance Europe	1.91	This should not be applicable to existing agreements, during the preparatory phase. We propose the following wording for the last sentence: "For outsourcing of critical or important functions this in particular includes:..." 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.	Please refer to the resolution to comment 903. EIOPA has clarified this for c), however a) and b) also refer to the outsourcing of non-critical or important functions or activities.
906.	Polish Chamber of Insurance	1.91	Exit strategy in each outsourcing contract is far beyond normal governance principles. The rationale is that under normal management rules it is not always possible or practicable to have an exit strategy for each outsourcing contract.	The principle that animates the Guideline wants to emphasize that good governance must, at least, be sensitive to the risks associated with the dependence of outsourcing contracts; at least when the function or activity is critical or important. EIOPA has clarified that the exit strategy is only to be included in the outsourcing policies for

				<p>the latter.</p> <p>This sensitivity leads to defining contract clauses which provide forms of protection for those outside conventions. The contracts outstanding at the moment of renewal should grasp this principle.</p>
	<p>Powszechny Zakład Ubezpieczeń Spółka Akcyjna</p>	<p>1.91</p>	<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> <p>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?</p>	<p>The latter is correct for a) and b) as this is a requirement that applies to all outsourcing arrangements from the start of Solvency II.</p> <p>EIOPA has clarified that c) only applies to the outsourcing of critical or important functions or activities – which include non-key functions.</p> <p>The OMDII has no affect on the outsourcing requirements of the Solvency II Directive.</p>
<p>907.</p>	<p>ROAM-</p>	<p>1.91</p>	<p>Il faudrait viser également l'article 41.3 de la directive SII</p>	<p>EIOPA has included a</p>

	Réunion des Organismes d'assurance mutuell		(« conformément aux articles 49 et 41.3 de la directive SII »)	reference to Article 41, however – in line with the rest of the GL – has not specified the relevant paragraph of the article.
909.	AMICE	Section III. General Comments	<p>Further guidance is needed on how the guidelines in Section III should be applied to horizontal groups knowing that each of its members is responsible for the enforcement of its governance rules.</p> <p>What is the perimeter? subsidiaries of the members of the group?</p>	Noted. Please refer to the resolution to comments 98 and 350 and 196.
910.	German Insurance Association (GDV)	Section III. General Comments	We 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 include the following reference: "As far as power under company law is given..."	Noted.
911.	Insurance Europe	Section III. General Comments	<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>	<p>Noted.</p> <p>Noted.</p>

912.	NFU - Nordic Financial Unions	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 general.	Noted: it is a corporate governance issue that is not in the scope of these Guidelines.
913.	ROAM- Réunion des Organismes d'assurance mutuell	Section III. General Comments	Comment appliquer les guidelines de la Section III aux SGAM : quelle entité porte la responsabilité sachant que chaque affilié de la SGAM est responsable de l'application de ses règles de gouvernance. Quel est le périmètre du groupe : filiales des entités affiliées ? Cette section ne prend pas en considération les changements à la directive SII faits par la directive 2011/89.	Please refer to the resolution to comment 98.
914.	International Underwriting Association of London (IUA)	1.92	It is not clear to us whether the wording implies that a group can choose which entity should be responsible for good governance? It needs to be made clear that a member of a group can perform governance and other functions on behalf of another member of the group. Currently that is only explicitly stated in the explanatory text.. Guideline 52 implies that an entity within the group can meet the governance requirements on behalf of the group. However there is not sufficient clarity regarding what EIOPA considers to fall within the scope of governance requirements. We note that in guideline 56 in the 'System of Governance' paper includes the operation of risk management on behalf of the group within the scope of governance. Additionally, guideline 19 of the 'Forward Looking Assessment of the undertaking's own risks (based on ORSA principles)' paper includes the production of a forward looking assessment on behalf of the group. However, there is no mention of risk appetite. Can the relevant entity define and monitor compliance with the group's risk appetite on behalf of the group. (An inactive holding company would	Yes, the group can choose. The Guideline focuses on what should be done and not on what is allowed. Noted.

			<p>not of its own accord have a risk appetite.)</p> <p>Could the relevant entity also be responsible for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the determination of the Solvency Capital Requirement for the group, on behalf of the group. <input type="checkbox"/> the use of an Internal Model which has been approved by the regulator for the entity's own use, to produce that Solvency Capital Requirement for the group <input type="checkbox"/> the validation of the Internal Model's use to produce the group SCR <input type="checkbox"/> undertaking group level financial and regulatory reporting on behalf of the group 	
916.	STEPTOE & JOHNSON LLP	1.92	<p>We fully support the principle that the parent (re)insurance undertaking or insurance holding company may identify the undertaking responsible for fulfilling the governance requirements at group level and report it to the group supervisor. Based on the additional information in the explanatory text, we understand that any entity within the (re)insurance group may be designated and identified as an entity responsible for fulfilling the governance requirements at group level.</p> <p>(Re)insurance groups differ from each other in their structure and organisation. Insurance holding companies may fulfil different roles within the groups: they may carry out a financial or non-financial, industrial activity, centralise the management and supervision of the group companies, establish the risk appetite for the group and control capital allocation for efficiency purposes.</p> <p>However, their corporate object and sole activity may be limited to holding shares in subsidiaries without actively participating or controlling the subsidiaries' business activities (we refer to this last category as "inactive holding companies").</p> <p>These differences should be acknowledged in the Guidelines. Therefore, we welcome the clarification that the obligation to meet the governance requirements at group level may be delegated to any entity within the group.</p>	Noted; please see comment 32

			<p>For the sake of clarity and consistency in the interpretation of the Guideline, we suggest to include an express reference in the Guideline that the entity responsible for the fulfilment of the governance requirement at group level may be other than the parent undertaking.</p> <p>While such possibility is apparent from the explanatory text, we note that the latter does not seem to be an integral part of the Guidelines and, hence, the comply-or-explain mechanism would not apply.</p> <p>Therefore, we consider that clarifying the Guideline would positively contribute to a consistent application of such Guideline by the national supervisors.</p>	For EIOPA the concept is correctly expressed.
918.	German Insurance Association (GDV)	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 add that is expected that the AMSB at group level "ensures the overall consistency of the groups' governance structure" and that the AMSB at group level "has appropriate means to control that each entities in the group complies with all applicable corporate governance requirements".</p> <p>The AMSB at group level has often not the power to ensure these requirements. Additionally art. 246 of the Solvency II Directive only requires that "risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings."</p> <p>As such, we would propose rephrasing the Guideline and delete in the explanatory lit b) and d) of paragraph 1.224.</p> <p>Should also be stated explicitly that the allocations of responsibilities at individual level should support the group's effective risk management process (according to the explanatory text).</p>	Noted (ET).
919.	Insurance Europe	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</p>	Noted (ET).

			<p>it states that is expected that the AMSB at group level “ensures the overall consistency of the groups’ governance structure” and that the AMSB at group level “has appropriate means to control that each entities in the group complies with all applicable corporate 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 should support the group’s effective risk management process (according to the explanatory text).</p>	
921.	Nordea Life & Pensions	1.93	<p>We have earlier experienced material differences in the way Solvency II related issues are implemented locally in each country. We assume that it also this time will be differences and because of that, when a group consist of units in different countries, it will be difficult to set adequate internal governance requirements. Internal requirements will then cause the result that some units need to fulfil more strict requirements than needed in the country and more strict than it’s competitors in that country.</p>	Noted.
923.	German Insurance Association (GDV)	1.94	<p>The wording may be misleading because it is required 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.</p>	EIOPA wants to highlight these two aims that can be challenging to meet.
924.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.94	<p>This does not seem to add anything useful to the substance in 1.93 and may be deleted.</p>	Disagree.
925.	Insurance Europe	1.94	<p>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.</p>	Please refer to the resolution to comment 923.

927.	AMICE	1.95	We suggest the paragraph (a) is re-drafted as follows: (a) 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 solo level.	Disagree.
929.	German Insurance Association (GDV)	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.	It is true that the wording differs but the intention of a consistent implementation is a proper functioning and steering of the functions, otherwise no implementation would be needed.
930.	Insurance Europe	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.	Please refer to the resolution to comment 929.
931.	Investment & Life Assurance Group Limited (ILAG)	1.95	Where there is possible conflict concerning different NCA requirements, what is the remedy and which takes precedence?	The group supervisor is responsible.
932.	ROAM-Réunion des Organismes d'assurance mutuell	1.95	Point a) se réfère à "individual" level? ne veut-on pas plutôt parler de "solo level" ? Point c) soudainement introduit le concept « insurance group »? ne serait-il pas plus clair d'utiliser « insurance group » dès le debut ?	Disagree. The Guideline has been changed. "Insurance

				group" is not used anymore.
933.	Deloitte Touche Tohmatsu	1.96	In the Level 1 text contagion risk is presented as a subset of concentration risk. We propose rewording sub-paragraph a. to the following: "reputational risk and risks arising from intra-group transactions and risk concentrations, including contagion risk, at the group level;"	Agree.
934.	DIMA (Dublin International Insurance & Management)	1.96	This is a new requirement and therefore is inappropriate to introduce within interim measures. Please see comment at 1.40.	Disagree: it follows from article 41 and 246 of the Solvency II Directive.
935.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.96	The second sentence (In particular,) is purely explanatory and would be better included in the explanatory text.	Noted.
936.	International Underwriting Association of London (IUA)	1.96	It does not appear appropriate to us to introduce such a level of prescription.	Disagree.
937.	ROAM- Réunion des Organismes d'assurance mutuell	1.96	Cf. Commentaire au 1.95 a)	Noted.
938.	Insurance Europe	1.97	Reference is made to each individual undertaking. It is unclear if refers only to undertakings within the EEA	It should refer to each individual entity of the group including the non-EEA and non-regulated ones. The Guideline has been redrafted.
939.	NFU - Nordic Financial	1.97	Here, the same principle as in Guideline 17. 1.41. and Guideline 26. 1.55. should apply.	Noted.

	Unions		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.	
940.	Nordea Life & Pensions	1.97	We have earlier experienced material differences in the way Solvency II related issues are implemented locally in each country. We assume that it also this time it will be differences and because of that, when a group consist of units in different countries, it will be difficult to set adequate fulfil all Group Risk Management requirements, prior to the Solvency II implementation date.	Noted.
941.	ROAM- Réunion des Organismes d'assurance mutuell	1.97	Cf. Commentaire au 1.95 a)	Noted.
943.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.98	This does not seem to add anything useful to the substance of 1.97 and may be deleted.	Disagree: the second paragraph does not deal with the same issue.
944.	ASSOCIATION OF BERMUDA INSURERS AND REINSURERS (ABIR)	1.99	ABIR believes that national competent authorities should be given guidance as it relates to its approach on group internal models and third country group supervisors.	Please refer to the Guidelines on internal model pre-application.
945.	Deloitte Touche Tohmatsu	1.99	This paragraph does not have a clear requirement for the system of governance. Thus, we propose deletion of this requirement from this set of guidelines.	The Guideline was deleted.
947.	German Insurance Association (GDV)	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)	Please refer to the resolution to comment 945.

948.	Insurance and Reinsurance Stakeholder Group (IRSG)	1.99	The intent of this guideline is very unclear and it seems unlikely to be verifiable. Unless a clear rationale can be offered it should be deleted.	Please refer to the resolution to comment 945.
949.	Insurance Europe	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)	Please refer to the resolution to comment 945.
950	Powszechny Zakład Ubezpieczeń Spółka Akcyjna	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?	Please refer to the Guidelines for internal model pre-application.
952.	MSV Life	Compliance and Reporting Rules General Comments	Many firms in various Member States are at different stages of progress with their Systems of Governance. Hence the extent of work required by individual companies may vary considerably. Therefore the pace of convergence is likely to be slow. Whilst there are a number of tangible aspects of the Systems of Governance that are outlined in the CP, when combined, "proportionality", "phasing" and the "principles based" nature of the guidelines are all likely to lead to a wide range of interpretation of what is required and by when. In particular the CP is rather vague about what is expected to be in place by the end of 2014.	With NCAs ensuring that all undertakings take the appropriate steps to ensure that they comply with all requirements by 1 January 2016 and the required steady progress, undertakings that hang back will need to speed up and convergence will by no means be slow.
954.	German Insurance Association (GDV)	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 can only be made by the legislator, not by the authority itself. As such, more time may be required.	In this case NCAs can answer that the "intend to comply" before the necessary legal changes are introduced.
955.	Insurance Europe	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 can only be made by the legislator, not by the authority itself. As such, more time may be	Please refer to the resolution to comment 953.

			required.	
957.	Nordea Life & Pensions	1.102	When opening for that countries may decide to no comply with these guidelines, the differences between the countries will increase and might cause even more uncertainty than what positive effect might be achieved with the proposal.	The comply-or-explain mechanism is prescribed in EIOPA legislation and cannot be changed through these Guidelines. NCAs are required by EIOPA legislation to make all efforts to comply with EIOPA Guidelines, hence they cannot just "decide" not to comply.
958.	MGM Advantage	Impact Assessment – General Coments	The Impact Assessment again stresses the approach to proportionality and phase-ing in of the requirements. We welcome this but repeat our general comment that for clarity such language should be included within the Guidelines to ensure that the NCAs are clear as to the scope and purpose of the Guidelines	Disagree. The Guidelines state the outcome of the undertakings preparation towards Solvency II. See Feedback Statement.
959.	Nordea Life & Pensions	2.1	The wording „the entity responsible for fulfilling the requirements at group level” is used repeatedly in the Proposal. There is a need for a definition of this sentence.	Agree.
960.	AMICE	2.3	EIOPA assumes that each insurer is aware of the so-called stabilised package on the Level 2 Implementing measures whereas those measures have not been published and they are not available either in the official languages(s) of the European Union.	Agree; wording changed.
962.	ROAM- Réunion des Organismes d’assurance mutuell	2.3	a) l’EIOPA sous entend que chaque assureur est au courant de la « current version of L2 implementing measures » alors que ces mesures ne sont pas publiées et ne sont pas dans chaque langue nationale.	Agree; wording changed.

965.	Insurance and Reinsurance Stakeholder Group (IRSG)	2.7	We agree with sub-paragraph (b) particularly	Noted.
966.	Investment & Life Assurance Group Limited (ILAG)	2.8	We agree that the provision of guidelines is helpful.	Noted.
968.	Investment & Life Assurance Group Limited (ILAG)	2.14	We entirely agree that this should be applied in a proportionate manner.	Noted.
969.	MGM Advantage	2.14	This language should usefully be inserted into the actual Guidelines	Disagree. This is the overarching principle of proportionality which is already laid down in the Solvency II Directive.
970.	German Insurance Association (GDV)	2.15	As referred in the general comments, we believe that some Guidelines are too detailed	Noted.
971.	Insurance Europe	2.15	As referred in the general comments, we believe that some Guidelines are too detailed	Noted.
972.	Insurance Europe	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.	Disagree, see comment 958
974.	Investment & Life Assurance Group Limited (ILAG)	2.18	It is not clear what this means and an example would be helpful.	Noted. But examples differ from Member State to Member State depending on the

				existing regulative measures. See Feedback Statement.
975.	MGM Advantage	2.18	It is not clear what this means and an example would be helpful.	See comment 974.
976.	Investment & Life Assurance Group Limited (ILAG)	2.19	We note that the objective is to phase requirements in, but the suggested dates do not allow much latitude for gradual phasing.	Disagree. The preparatory phase will start 1 January 2014 until full Solvency II requirements are applicable. This allows for at least 2 years of phasing in.
977.	MGM Advantage	2.19	We note that the objective is to phase requirements in but the suggested dates do not allow much latitude for gradual phasing.	See comment 976.
978.	Investment & Life Assurance Group Limited (ILAG)	2.24	We entirely agree that the guidelines should not create any new material requirements. We do not believe that compliance with the guidelines will be achieved at no cost.	Disagree; but changed wording.
979.	MGM Advantage	2.24	Unfortunately we have severe doubts that there will be no additional costs to the industry, and hence customers, from the introduction of the Guidelines.	See comment 978.
980.	Insurance and Reinsurance Stakeholder Group (IRSG)	2.25	<p>We agree with EIOPA that the terminology here can be quite diverse and ambiguous. We agree that EIOPA should limit itself in the guidelines to clarification that appetite and tolerance are not the same.</p> <p>EIOPA would usefully consider using similar language to that used in relation to the banking sector:</p> <p>"36. 'Risk tolerance/appetite' is a term that embraces all relevant definitions used by different institutions and supervisory authorities. These two terms are used here interchangeably to describe both the absolute risks an institution is a priori open to take (which some call risk</p>	Disagree. EIOPA abstained from defining the terms. See point 2.36.

			appetite) and the actual limits within its risk appetite that an institutions pursues (which some call risk tolerance).”	
983.	AMICE	2.43	Whether to require combined annual information from the actuarial function to the AMSB or leave it up to the undertaking to decide how and when the information is to be provided	Agree; wording changed.
984.	AMICE	2.44	We support the option where the actuarial function is required to produce a single document covering all relevant issues concerning its tasks.	Noted.
985.	AMICE	2.49	Whether or not to have extended notification requirements during the preparatory period We welcome EIOPA’s decision to only apply the notification requirements during the interim phase to the persons already subject to notification requirements at national level. This should be clearly stated in guideline 11.	Noted. EIOPA abstained from introducing the notification requirement during the interim phase, but would like to emphasize that this requirement is part of the Solvency II Directive.
986.	Insurance and Reinsurance Stakeholder Group (IRSG)	2.49	We share EIOPA’s recognition of the dilemma associated with prescription of the form of notification of key appointments. On balance we think the more pragmatic approach of these draft guidelines is to be preferred, but we are alert to the potential risks arising from subjective or inconsistent interpretation by both undertakings and NCA’s which could be a systemic risk for the sector.	See comment 985.
987.	Investment & Life Assurance Group Limited (ILAG)	2.49	We agree with this.	Noted.
988.	Investment & Life Assurance Group Limited	2.69	We do not agree there will be no direct costs to policyholders. For mutual insurers and those where policyholders receive a proportion of the surplus all, or most, of the cost will be directly attributable to policyholders. Nor	Noted; but see changed wording.

	(ILAG)		do we believe that these proposals will result in a significant improvement of policyholder protection.	
989.	MGM Advantage	2.69	We do not agree there will be no direct costs to policyholders. For mutual insurers such as ourselves, and those where policyholders receive a proportion of the surplus, all or most of the cost will be directly attributable to policyholders. Nor do we believe that these proposals will result in a significant improvement in policyholder protection.	See comment 988.