

**Comments Template on the proposal for The guidelines on the operational functioning of colleges**

**Deadline  
30 June 2014  
23:59 CET**

Name of Company:	Insurance and reinsurance Stakeholder Group (IRSG)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Do <b>not</b> change the numbering in the column "reference"; <b>if you change numbering, your comment cannot be processed by our IT tool</b></li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to CP-14-010@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the paragraphs refers to <b>Title of CP-Paper here</b>.</p>		
<b>Reference</b>	<b>Comment</b>	
General Comment	<p>This opinion relates to the Proposal for Guidelines on the operational functioning of colleges of supervisors issued for public consultation on 1 April 2014.</p> <p>As a general comment, although guidelines on the operational functioning of colleges are no doubt useful, there is a risk of over-regulation. The number and length of the guidelines should therefore be kept to an efficient minimum.</p> <p>There is a question about the legal basis for this document. Reference is made in the introduction to Art. 248 (6) of the Solvency II Framework Directive.</p> <ul style="list-style-type: none"> <li>• This provision, which was not changed in substance by Omnibus II, refers to the elaboration of guidelines for the operational functioning of colleges of supervisors <i>"on the basis of comprehensive reviews of their work in order to</i></li> </ul>	

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*assess the level of convergence between them. Such reviews shall be carried out at least every three years. Member States shall ensure that the group supervisor transmits to EIOPA the information on the functioning of the colleges of supervisors and on any difficulties encountered that are relevant to those reviews”.*

- This seems to suggest that EIOPA should only draft the guidelines after having carried out a review of their operation in practice. It would appear at least necessary for EIOPA to mention in the Introduction whether such a review has been carried out and what lessons EIOPA has taken from that review. That should be the basis for the guidelines.
- At the same time, EIOPA should indicate what the relationship will be between these guidelines and the Regulatory Technical Standards which EIOPA may want to draft (based on the guidelines) or will have to draft (on the coordination of group supervision).

The explanatory text from pages 46 onwards with detailed explanations is helpful, although sometimes repetitive and too descriptive.

Some drafting changes would upgrade the quality of this document. It responds to real concerns but one should avoid introducing new legal requirements. Experience will tell where improvements in the legal framework are possible.

It might be useful to consider possible implications for cross-sectorial colleges relating to financial conglomerates (see, Consultation Paper of the Joint Committee).

Introduction & 1.1.

A number of **general comments** are worth mentioning regarding the introduction:

- The text of the Introduction needs serious redrafting. The text is clearly of less quality than the guidelines themselves.
- The Introduction introduces the paper well, sets the scene and then goes directly into the key issues, such as the establishment of the college of

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	<p>supervisors, on-going functioning, etc.</p> <ul style="list-style-type: none"> <li>• It would be good to give a definition early on in the Introduction of the concept of "Participant" in the college. That concept is defined in the "Arrangement" but not elsewhere in the document.</li> <li>• It might be helpful to include an Executive Summary (after the introduction) which would ensure that the high-level supervisors and other policy-makers are provided with enough information to make a decision. The Executive Summary should summarize the key points of the guidelines in only 2-3 pages.</li> </ul>	
Introduction & 1.2.		
Introduction & 1.3.		
Introduction & 1.4.		
Introduction & 1.5.		
Introduction & 1.6.		
Introduction & 1.7.		
Introduction & 1.8.		
Introduction & 1.9.		
Introduction & 1.10.		
Introduction & 1.11.		
Guideline 1	<p>The following wording should be included in order to ensure that the members of the College have the relevant knowledge: <i>"The group supervisor should have sufficient knowledge of the insurance (or reinsurance) group, both domestic and international, in order to anticipate risks faced by the group. The host supervisor should have relevant knowledge with respect to the insurance group's operations within its jurisdiction."</i></p>	

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	Overall, the guideline for establishing a college seems appropriate with respect to its content. However, given that one size does not fit all, the actual design and organization of colleges should depend on the specific circumstances to ensure efficient cooperation. No single structure will be appropriate for all insurance groups. Therefore, it might be helpful highlighting a more pragmatic approach which would ensure flexibility in the design of the colleges.	
Guideline 2		
Guideline 3		
Guideline 4	<p>There is a strong agreement to include third-country host supervisors of major operations of an EU insurance group in the activities of the College. Particularly, supervisors from EU candidate countries such as Macedonia, Montenegro, Serbia or Turkey should be encouraged to actively participate in Colleges.</p> <p>However, it might happen that some third-country authorities might be reluctant to attend College meetings and will perhaps not provide access to their data (for example, due to disclosure of commercially sensitive information). In this respect, one of the most basic questions to be considered is how to ensure that information and data are treated on a confidential basis. This might be even more important for the third-country supervisors in order to ensure their full trust and cooperation.</p> <p>Article 66 of Directive 2009/138/EC is in this regard fairly short and vague. Therefore, the confidentiality safeguards and mechanisms should be more precisely laid out in the guidelines</p>	
Guideline 5	It would be useful for EIOPA to say something about its experience with the application of confidentiality and professional secrecy rules by third-country supervisors. EIOPA might also want to indicate which role it intends to play in this respect.	

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	On a related note, discussions and decisions of the College should be properly documented and securely stored. These documents should be made available to the insurance group as appropriate.	
Guideline 6		
Guideline 7		
Guideline 8		
Guideline 9	The following wording should be considered to be included as well: "The College's structure should be regularly reviewed so that its design remains valid for the insurance groups as they develop over time."	
Guideline 10	One could consider to add the following additional tasks for the group supervisor :  <i>"j.) facilitate communication between the College and the respective insurance (reinsurance) group</i>  <i>k.) inform the respective insurance (reinsurance) group about the structure of the College"</i>	
Guideline 11		
Guideline 12		
Guideline 13		
Guideline 14		
Guideline 15	The insurance group should be informed on a regular basis about the relevant outcomes of the College by the group supervisor. This should be done in a timely manner and preferably in both face-to-face and written formats. The group supervisor should meet with the management of the insurance group and debrief the management about the activities and outcomes of the College.	

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Guideline 16		
Guideline 17		
Guideline 18		
Guideline 19	It is agreed that Colleges themselves should come up with a list of ratios which are meaningful for their work. However, the list of ratios included in Annex 2 on page 39 is too descriptive, fairly general and sometimes lacking precision. Therefore, the entire list of ratios should be either dropped or it should be made clear that the table is presented only for illustration purposes.	
Guideline 20		
Guideline 21		
Guideline 22		
Guideline 23	Besides the general requirements, the document indicates that a delegation of tasks between the supervisors should be possible. This delegation should be used only in a very limited way. The national supervisor for each country should be the relevant supervisory body.  Therefore, the delegation of tasks should not erode the constitutional legality of each country.	
Guideline 24		
Guideline 25		
Guideline 26		
Guideline 27		
Guideline 28		

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Annex 1 - Introduction	The drafting of the Introduction to the Annex 1 "Coordination Arrangement Template" does not read well. What is the legal basis? It is said "not to create any additional legally binding obligation on the Members and Participants". Could it not be indicated that this is mere guidance?	
Annex 1 - 1.		
Annex 1 - 2.		
Annex 1 - 3.		
Annex 1 - 4.		
Annex 1 - 5.		
Annex 1 - 6.		
Annex 1 - 7.	With respect to information exchange, there is a concern that the information would flow only one way, i.e. from the host supervisor to the home (group) supervisor. What should be encouraged and highlighted more in the guideline is the need for a two-way communication between supervisors. This is of crucial importance, in particular since the strong level of mutual trust between supervisors can only be achieved if the exchange of information flows both ways.	
Annex 1 - 8.		
Annex 1 - 8.1.	<i>Procedure for the decision making process</i>  The Colleges should help to tackle emergency situations and help to be prepared for such events. During the recent crisis, the lack of coordination allowed supervisors to act in many cases on their own (an example is the rescue of Fortis in 2008, when the Belgian, Dutch and Luxembourg's supervisors did not entirely coordinated their actions). In this regard, decisions will be made typically by a consensus; however there should be a mechanism created to resolve potential disagreements. In this context, the group supervisor should play a more active role to mediate disputes between members of the College and play a mediator's role when no agreements are	

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	accomplished. Reference should also be made to the powers of EIOPA to provide binding mediation.	
Annex 1 – 8.2.		
Annex 1 – 8.3.	Point 8.3 describes how joint on-site examinations should be carried out. Overall, the guidance is insightful and well written. Just a minor suggestion, when joint onsite examinations are performed, the home supervisor should be the primary contact point for the insurance group. This would simplify the communication process within the insurance group and reduce the translation costs.	
Annex 1 – 8.4.		
Annex 1 – 8.5.		
Annex 1 – 8.6.		
Annex 1 – 8.7.		
Annex 1 – 8.8.		
Annex 1 – 8.9.		
Annex 1 – 9.		
Annex 1.D – Table "information regarding this document"		
Annex 1.D - Introduction		
Annex 1.D.1.1.		
Annex 1.D.1.2.	It would be more correct to refer to <i>"Emergency Plan for the college of supervisors of an insurance or reinsurance group"</i> . The drafting of the text can be improved. It would be better to refer to <i>"Risk of failure of the reinsurer (external or internal)"</i> rather than to <i>"Danger of failure..."</i> . Similarly: <i>"Risk of insolvency"</i> rather than <i>"Danger of</i>	

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	<i>insolvency</i> ". Which insolvency is meant?	
Annex 1.D.1.3.		
Annex 1.D.1.4.		
Annex 1.D.1.5.		
Annex 1.D.1.6.		
Annex 1.D.1.7.		
Annex 1.D.1.8.		
Annex 1.D.2.		
Annex 1.E – Explanations		
Annex 1.E.1		
Annex 1.E.2		
Annex 1.E.3		
Annex 1.E.4		
Annex 1.E.5		
Annex 1.E.6		
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Annex 1.E.13		
Annex 1.E.14		
Annex 1.E.15		
Annex 1.E.16		
Annex 1.E.17		
Annex 1.E.18		
Annex 1.E.19		
Annex 1.E.20		
Annex 1.E.21		
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Annex 1.E.25		
Annex 1.E.26		
Annex 1.E.27		
Annex 1.E.28		
Annex 1.E.29		
Annex 2.1		
Annex 2.2		
Annex 2.3		
Annex 2.4		
Annex 2.5		

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Annex 2.6		
Annex 2.7		
Annex 2.8		
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Annex 2.11		
Annex 2.12		
Annex 2.13		
Annex 2.14		