

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

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

Name of Company:	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"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-13-008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the paragraphs refers to this Consultation Paper, the numbering of cells refers to the Technical Annexes II and III.</p>		
Reference	Comment	Resolution
General Comment	<p>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: The degree of difference in standard across member states suggested a guideline was needed for sake of harmonization; and</p>	

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	<p>Whether a proposed guideline is clear and capable of being verified in implementation.</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: <i>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.</i></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: <i>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.</i></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>	
Introduction General Comment		
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1.12	A point of general relevance is that taken in isolation this guideline may read over-prescriptively. Our understanding is that guidelines generally apply to NCA's only on a 'comply or explain' basis.	
Section I. General Comments		
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Section II. General Comments		
Chapter I General Comments		
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1.21	In the spirit of proportionality, small and medium size insurance undertakings should be allowed to allocate more than one key function (other than internal audit) to an individual.	
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1.23	EIOPA might usefully clarify in the explanatory text or otherwise 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.	
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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.	
1.27	This would usefully be expanded to embrace stakeholders: <i>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.</i>	
1.28	<i>Comment re explanatory text :</i> 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.).	
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Chapter II General		

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Comments		
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>	
1.32		
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>	
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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><i>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.</i></p>	

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	Note : Paragraph 1.54 of the explanatory text should be amended similarly.	
1.36	For undertakings which are members of groups, this guideline may not be workable as stated (because outsourcing may be managed at a group level).	
Chapter III General Comments		
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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 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>	
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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.	
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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.	
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Chapter IV General Comments		
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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.	
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.	
1.63	We suggest that, consistently with the explanatory text, this guideline be amended to: 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.	
Chapter V General Comments		
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.	
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.	
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Chapter VI General Comments		
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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.	
Chapter VII General Comments		
1.70		
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'.	
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Chapter VIII General Comments		
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.	
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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.	

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1.83	<p>This could be much more clearly worded as:</p> <p><i>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.</i></p> <p>Alternatively it could be deleted.</p>	
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Chapter IX General Comments		
1.88	<p>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?</p>	
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Section III. General Comments		
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1.94	This does not seem to add anything useful to the substance in 1.93 and may be deleted.	
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1.96	The second sentence (In particular,) is purely explanatory and would be better included in the explanatory text.	
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1.98	This does not seem to add anything useful to the substance of 1.97 and may be deleted.	
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.	
Compliance and Reporting Rules General Comments		
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2.7	We agree with sub-paragraph (b) particularly	
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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: "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 appetite) and the actual limits within its risk appetite that</p>	

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	an institutions pursues (which some call risk tolerance)."	
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2.49	We share EIOPA's recognition of the dilemma associated with prescription of the form	

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	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.	
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