

GDV-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:	German Insurance Association (GDV)	
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 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 	

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	<p>some time. The German Supervisory Authority is not permitted to amend the legal framework upon which the undertakings are supervised.</p> <ol style="list-style-type: none"> 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. 	
Introduction General Comment		
1.1		
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.	
1.3		
1.4		
1.5		
1.6		

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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.	
1.8		
1.9		
1.10		
1.11		
1.12		
Section I. General Comments		
1.13		
1.14		
1.15	Also, as mentioned above, the EIOPA Regulation does not require such a report.	
Section II. General Comments		
Chapter I General Comments	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.	
1.16	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”.	

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	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.	
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.	
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.	
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.	
1.20		
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.	
1.22		
1.23	We appreciate this clear statement since undertakings effectively run by two persons are necessary to efficient use of resources especially within groups	

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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.</p> <p>This should apply to “material” decisions only, consistently with the principle of proportionality.</p>	
1.25		
1.26	<p>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.</p>	
1.27	<p>Proportionality also needs to apply with regard to the level of completeness required for documentation..</p>	
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 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>	
1.29		

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1.30		
Chapter II General Comments		
1.31	<p>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.</p> <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>	
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. .	
1.33	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.	

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	<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>	
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 that 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>	
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</p>	

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	replaced by “having”.	
1.36	<p>This Guideline seems to go 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>	
Chapter III General Comments		
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.	
1.38	<p>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. »</p> <p>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 ».</p> <p>Often the responsible entity at group level does not have the (legal) power to manage and control the risks at the whole group.</p>	

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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.	
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>	
1.41		
1.42		
1.43	<p>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.</p> <p>Also is hardly possible for policies to be able to cover with all potential designs of products. Processes, on the other hand, should be designed in a way that in the “new product process” risk</p>	

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	<p>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 <u>process of designing</u> 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 <u>process of designing</u> of a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.</p>	
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 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>	
1.45	<p>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".</p>	
1.46	<p>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.</p> <p>Besides, neither on Level 1 nor on Level 2 of the Solvency II regulation, operational risk stress</p>	

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	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.	
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>	
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 <u>as well as</u> and procedures for assessing and monitoring the creditworthiness and diversification of <u>these reinsurance</u> counterparties.</p> <p>We would welcome clarification on why unit-linked policyholders are 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.</p>	
1.49		
1.50	.Regarding the 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.	

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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 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.	
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.	
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 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.”	
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	

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	<p>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>	
1.54	<p>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).</p>	
1.55		
1.56	<p>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.</p>	
1.57		
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>	
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1.61		
1.62		

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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>	
1.64	<p>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.</p> <p>As such we would propose to delete this Guideline.</p>	
1.65	See comments on 1.64. We propose to delete this Guideline.	
1.66		
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	
1.67	<p>Guideline 33 states that “all personnel” should be aware of their role in the internal control system</p> <p>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.</p>	

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1.68		
1.69		
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	
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”.	
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 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”</p>	
1.72		
1.73		

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1.75	<p>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.</p> <p>Also instead of mentioning the “persons” responsible for the remedy of shortcoming, the respective unit should be mentioned here.</p>	
1.76	”	
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.	
1.77	<p>We suppose the objective was to refer to additional tasks or activities to the tasks and activities of <u>persons performing</u> the actuarial function.</p> <p>The explanatory text adds requirements that go beyond the Guideline.</p>	
1.78		
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<u>83</u> 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>	

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	<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. 	
1.80	We do not support the enforcing of Solvency II Pillar I calculations at this stage.	
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 <u>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</u> with respect to small variations introduced in the parameters of these valuation models”</p>	
1.82		
1.83	This Guidelines seems not to be consistent with draft Level 2 accordingly to which the actuarial function should “compare and justify any <u>unusual</u> differences in the calculation of technical provisions from year to year”	
1.84	We do not support the enforcing of Solvency II Pillar I calculations at this stage.	
1.85	In unclear to which tasks the Guideline is referring to.	

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	<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>	
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>	
1.87		
Chapter IX General Comments		
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. Otherwise there may be a possible violation of the principle of proportionality when applying these provisions to all outsourcing activities of the undertaking.</p>	
1.89		
1.90		
1.91		

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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 to include the following reference: "As far as power under company law is given..."	
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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's governance structure" and that the AMSB at group level "has appropriate means to control that each entities in the group complies with all applicable corporarate 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>	
1.94	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.	
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	

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	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.	
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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)	
Compliance and Reporting Rules General Comments		
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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, tmore time may be required.	
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2.15	As referred in the general comments, we believe that some Guidelines are too detailed	
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