

**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:	<b>AMICE</b>	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Do <b>not</b> change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:CP-13-008@eiopa.europa.eu">CP-13-008@eiopa.europa.eu</a>. Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the paragraphs refers to this Consultation Paper, the numbering of cells refers to the Technical Annexes II and III.</p>		
<b>Reference</b>	<b>Comment</b>	<b>Resolution</b>
<b>General Comment</b>	<p><b>Role of the administrative, management or supervisory body</b></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</p>	

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undertaking.

**Proportionality**  
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.

**Documentation**  
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.

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.

**Omnibus II /Solvency II timeline**  
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.

**Introduction General  
Comment**

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1.9	<p><u>Actuarial function</u></p> <p>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.</p>	
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<b>Section I. General Comments</b>		
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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.	
<b>Section II. General Comments</b>		
<b>Chapter I General Comments</b>		
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1.21	<b>Guideline 5 – Key functions</b> We support the approach taken by EIOPA as to the roles of the actuarial function with regards the risk management function.	
1.22	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?  Reference to article 246 on the supervision of the system of governance should also be made.	

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1.23	<p><b>Guideline 6 – Decision making</b> This guideline foresees that at least two persons effectively run an undertaking and that any <i>significant decision</i> 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.</p> <p>It also raises a number of questions such as:</p> <ul style="list-style-type: none"> <li>• Who are the two persons?</li> <li>• What should be their level of involvement?</li> <li>• What will happen in case of disagreement between the two persons who effectively are running the undertaking?</li> <li>• Does this principle lay in the implementation of a monitoring principle (or is it the aim to avoid a concentration of power)?</li> </ul> <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>	
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<b>Chapter II General Comments</b>	<b>Guideline 11 – Fit requirements</b>	
1.31	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 dependant on their tasks and responsibilities. Training courses also play an important role in improving its qualifications.	
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1.34	<b>Guideline 13 – Fit and proper policies and procedures</b>  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 ...).	
1.35	<b>Guideline 14 – Outsourcing of key functions</b>  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.	

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	<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 <u>who effectively run the employed service provider or sub service provider to perform an outsourced key function</u>”. The persons who effectively run the service provider should ensure that their employees are fit and proper.</p>	
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<b>Chapter III General Comments</b>		
1.37	<p><b>Guideline 15 – Role of the administrative, management or supervisory body</b></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>	
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1.40	<b>Guideline 16 – Risk Management policy</b>	

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	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.	
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1.43	<b>Guideline 18 – Underwriting and reserving risk</b> 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.	
1.44	<b>Guideline 19 – Operational risk</b> 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.	
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1.49	<b>Guideline 22 – Asset-Liability Management</b> 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.	
1.50	<b>Guideline 23 – Investment risk</b>	

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	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.	
1.51	<b>Guideline 24 – Liquidity risk</b> 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.	
<b>Chapter IV General Comments</b>		
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1.54	<b>Guideline 26 – Assessment of non-routine investment activities</b> 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.	
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1.59	<b>Guideline 28 - Assets not admitted for trading on a regulated financial market</b>	

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	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.	
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<b>Chapter V General Comments</b>		
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<b>Chapter VI General Comments</b>		
1.67	<p><b>Guideline 33 – Internal Control Environment</b></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 <i>relevant</i> 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>	

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<b>Chapter VII General Comments</b>		
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1.71	<p><b>Guideline 36 – Internal audit policy</b></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>	
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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>	
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<b>Chapter VIII General Comments</b>	<b>Actuarial Function</b>	
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1.79	<p><b>Guideline 41 – Coordination of the calculation of technical provisions</b></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>	
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<b>Chapter IX General Comments</b>		
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1.90	Add to c) The word "Relevant" before "financial market environment"	
1.91	<p><b>Guideline 51 – Outsourcing written policy</b></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>	
<b>Section III. General Comments</b>	<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>	
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1.95	<p>We suggest the paragraph (a) is re-drafted as follows:</p> <p>(a)has in place appropriate and effective tools, procedures and lines of</p>	

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	responsibility and accountability enabling it to oversee and steer the functioning of the risk management and internal control systems at individual <u>solo</u> level.	
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<b>Compliance and Reporting Rules General Comments</b>		
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<b>Impact Assessment – General Coments</b>		
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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 the official languages(s) of the European Union.	

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2.43	<b>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</b>	
2.44	We support the option where the actuarial function is required to produce a single document covering all relevant issues concerning its tasks.	
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2.49	<b>Whether or not to have extended notification requirements during the preparatory period</b>  We welcome EIOPA's decision to only apply the notification requirements	

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	during the interim phase to the persons already subject to notification requirements at national level. This should be clearly stated in guideline 11.	
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