

**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:	ACA	
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>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 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</p>	

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	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.	
Introduction General Comment		
1.1		
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1.4	<u>Potential impact of overlapping regimes.</u> 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 basis of a regime that is not yet in force. The concept of preparation is fundamental here.	
1.5		
1.6	<u>Lack of clarity between guidelines and explanatory text.</u> 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 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).	
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1.12	The current drafting guidelines do not recognize the interim period as a 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...”	
Section I. General Comments		
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Section II. General Comments		
Chapter I General Comments		
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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.	
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Chapter II General Comments		
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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.	
1.36	It should be made clear the outsourcing means external outsourcing (i.e. a service provider outside the scope of Solvency2). The requirements should not be relevant for outsourcing of key functions within the group if it is provided by an undertaking subject to an regulated activity (Solvency II or Banking regulation). 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?	
Chapter III General		

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Chapter IV General Comments		
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Chapter V General Comments		
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Chapter VI General Comments		
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Chapter VII General Comments		
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Chapter VIII General Comments		
1.77	To our understanding, and in application of the proportionality principle, smaller undertakings should be allowed to cumulate the actuarial function 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 ?	
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1.87	To avoid excessive administrative charges, this report should be, if not identical, at least based on current local regulation (actuarial report).	

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Chapter IX General Comments		
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Section III. General Comments		
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Compliance and Reporting Rules General Comments		
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