



EIOPA-16/858
12/12/2016

Final Report
on
the proposal for
Guidelines
on facilitating an effective dialogue
between competent authorities
supervising insurance undertakings and
statutory auditor(s) and the audit firm(s)
carrying out the statutory audit of those
undertakings

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1. Executive summary

Introduction

On 1st February 2016, EIOPA launched a Public Consultation on the draft Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those undertakings that were adopted by the Board of Supervisors.

This final report sets out the final text of the Guidelines including the final impact assessment and the resolution of comments received during the public consultation.

Content

The Final Report includes an overview and summary of the main conclusions of the Public Consultation, including the full final Impact Assessment, as well as the Comments and Resolutions Template.

Next steps

The Guidelines will become applicable by 31 May 2017. Earlier application is encouraged.

2. Feedback statement

General comments

In line with the objectives of the European reform on statutory audits and according to Article 16 of the EIOPA Regulation¹ and of Article 12 (2) of Regulation 537/2014² (Audit Regulation), EIOPA shall, taking current practices into account, issue Guidelines addressed to competent authorities supervising insurance undertakings for the purpose of facilitating the establishment and the maintenance of an effective dialogue between the competent authorities supervising insurance undertakings and the statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those undertakings.

For the purpose of strengthening the supervision of insurance and reinsurance undertakings and the protection of policy holders, Directive 2009/138/EC sets out legal requirements on statutory auditors to report promptly any facts which are likely to have a serious effect on the financial situation or the administrative organisation of an insurance or a reinsurance undertaking. However, in addition to the duty to report such information on serious facts and incidents, supervisory tasks can be supported by an effective dialogue between supervisors and statutory auditors and audit firms.

The vast majority of stakeholders fully supported EIOPA's approach to this new requirement of the Audit Regulation and set out the potential mutual benefits for both supervisors and statutory auditors. One can find two areas that stakeholders found difficult to understand:

¹ OJ L 331, 15.12.2010, p. 48–83.

² Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJL 158, 27.5.2014, p. 77). EBA has the same tasks relating to credit institutions.

- (1) the scope of the Guidelines, for example what "statutory audit" entails or who are the parties of the dialogue.
- (2) the consistency with the corresponding EBA Guidelines without providing for the same level of detail.

2.1. General comment: scope of the Guidelines

a. Summary of the problem

Some stakeholders mentioned that it is unclear which external audit activities could be subject of the dialogue. They highlighted that there are divergent supervisory practices about the external audit of prudential public disclosure, which should be clarified by the Guidelines.

Other stakeholders questioned the objective of the dialogue and mentioned that the supervised undertaking should be party of the dialogue.

b. EIOPA resolution

EIOPA is of the opinion that - whilst it may be desirable to further regulate for a number of reasons - the Guidelines have a scope that is explicitly determined by the Audit Regulation.

The objective of the Guidelines is to facilitate an effective dialogue between two parties, one being the supervisor, the national supervisory authority, and the other one being the statutory auditor or audit firm. That does not mean that there are other stakeholders, for example the supervised insurance undertaking, not worthy of being informed. As a matter of fact, it is simply out of the scope of the Guidelines to firmly regulate the communication with the supervised insurance undertaking.

Similarly, the scope of the content from the perspective of the auditor is defined by the scope of the Audit Regulation, which refers to the statutory audit of the annual and consolidated financial statements. The Guidelines are bound by that scope and should not regulate any further, facultative external audits.

2.2. General comment: Consistency with corresponding EBA Guidelines

a. Summary of the problem

Many stakeholders were concerned that the final sets of both EBA and EIOPA Guidelines should remain consistent. A number of stakeholders asked for more detailed regulation about which documents should be shared and to provide for a list of examples.

b. EIOPA resolution

In comparing the result of the currently existing supervisory practices in this field, it becomes evident that supervisory approaches do differ between insurance and banking supervisors. Therefore, it does not seem appropriate - at this point in time - to regulate more specifically which documents are considered relevant for the dialogue. EIOPA is of the view that it should - to some extent - be left to the development of supervisory practices in the insurance supervision. Clearly, this is an area to focus upon when reviewing the Guidelines in the future.

3. Annexes

Annex I: Final draft of the consulted instrument

Introduction

- 1.1. According to Article 12(2) of Regulation (EU) No 537/2014 of 16 April 2014 of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities³, EIOPA shall, taking current practices into account, issue guidelines addressed to competent authorities supervising insurance undertakings for the purpose of facilitating the establishment and the maintenance of effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and audit firm(s) carrying out the statutory audit of those undertakings. For the purpose of strengthening the supervision of insurance and reinsurance undertakings and the protection of policy holders, Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (hereinafter 'Solvency II Directive')⁴, in particular Articles 68 and 72, set out legal requirements on statutory auditors to report promptly any facts which are likely to have a serious effect on the financial situation or the administrative organisation of an insurance or a reinsurance undertaking. However, in addition to the duty to report such information on serious facts and incidents, supervisory tasks can be supported by effective dialogue between supervisors and statutory auditors and audit firms.
- 1.2. EIOPA, in close cooperation with the European Banking Authority (hereinafter "EBA"), has investigated the current supervisory practices relating to the communication between competent authorities supervising insurance and reinsurance undertakings in the EU and European Economic Area (hereinafter EEA) and statutory auditors and audit firms of those supervised insurance and reinsurance undertakings. The supervisors involved in that assessment all have regular and ad hoc contacts and exchange of views with statutory auditors. However, mostly, that interaction is not based on a formal set of rules or provisions. In order to facilitate a relevant and efficient dialogue - outside the scope of competent authorities' powers to ask for ad hoc information in accordance with Article 35 (2) (c) of Directive 2009/138/EC and outside the scope of the auditor's duty to report according to Article 72 of Directive 2009/138/EC -, EIOPA has developed this set of principle-based Guidelines to support EIOPA's members organisations in developing a consistent, appropriate and proportionate supervisory approach.
- 1.3. These Guidelines are issued in accordance with Article 16 of the EIOPA Regulation⁵.
- 1.4. These Guidelines are addressed to competent authorities supervising insurance and reinsurance undertakings.
- 1.5. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.
- 1.6. The Guidelines shall apply from 31 May 2017.

³ OJ L 158, 27.5.2014, p. 77.

⁴ OJ L 335, 17.12.2009, p.1.

⁵ OJ L 331, 15.12.2015, p. 48-83.

Guideline 1 – Approach to the dialogue

- 1.7. Competent authorities should ensure that the dialogue with the statutory auditor(s) and the audit firm(s) carrying out the statutory audit is open and constructive, as well as sufficiently flexible to ensure it can accommodate unexpected future developments.
- 1.8. Competent authorities should promote the mutual understanding of the roles and responsibilities of the parties involved in the dialogue in line with the requirements on confidentiality and professional secrecy in accordance with Article 34 of Regulation 537/2014 and Articles 64 to 71 of Directive 2009/138/EC. In particular, competent authorities should ensure that any information exchanged in the dialogue remains confidential and does not constitute a breach of any contractual or legal restriction on disclosure of information in accordance with Article 12 (3) of Regulation 537/2014 or Article 68 of Directive 2009/138/EC.
- 1.9. Competent authorities should ensure that the supervised insurance or reinsurance undertaking remains the main source of information for supervisory and statutory audit purposes and that the information gathered in the dialogue does not substitute its work.
- 1.10. Competent authorities should apply a risk-based approach to the frequency and depth of communication to ensure a proportionate approach. The depth of communication can be distinguished between regular dialogue and discussion of current, imminent or urgent developments.
- 1.11. Competent authorities should assess regularly whether the communication and the information exchange meet the objectives of the dialogue as described in this Guideline and adjust their approach accordingly.

Guideline 2 – Nature of the information to be exchanged

- 1.12. Competent authorities should consider exchanging information that is relevant to the parties of the dialogue in terms of their tasks, materiality and impact of the information.
- 1.13. In preparing and conducting the dialogue, and in communication with the statutory auditors or audit firms, competent authorities should address issues and information to be shared that are: undertaking-specific, industry-specific, current and emerging. This may entail setting up a standard list of issues to be touched upon in the dialogue. At the same time competent authorities should promote statutory auditors' or audit firms' active contribution to the selection of relevant issues and information to be shared.
- 1.14. Competent authorities should assess which information is relevant for the supervision of the undertaking and may request relevant information from the statutory auditor(s) or audit firms accordingly. Those areas may cover, but are not limited to, the external environment of the undertaking, corporate governance and internal controls, going concern assumption, audit approach, communication with the administrative, management or supervisory body and the undertaking's audit committee, valuation and the appropriateness of

capital, investments, and other relevant documents. Competent authorities should also consider sharing information relating to the individual undertaking from recent supervisory assessments or reviews, regulatory reporting, supervisory measures imposed on the undertaking and issues affecting the undertaking's going concern and issues relating to the industry, such as regulatory or macroeconomic developments. If the undertaking is part of a multinational insurance group, competent authorities, in particular group supervisors, should also consider covering relevant group-audit issues.

- 1.15. Competent authorities should be attentive regarding the form of information available at different stages of the statutory audit cycle when establishing the timing of dialogue with auditors.

Guideline 3 – Form of the dialogue

- 1.16. Competent authorities should consider and choose the most appropriate and most effective means and channels of dialogue in light of the individual circumstances of the dialogue.
- 1.17. Competent authorities should choose an appropriate combination of means and channels of the dialogue, which can be used ad hoc or on a regular basis, namely: written communication and oral communication, including phone calls and physical meetings. Competent authorities should promote setting up regular physical meetings to facilitate open communication, especially when initiating dialogue with participants for the first time.
- 1.18. Competent authorities should keep a record of the communication for its internal purposes to safeguard the succession of the communication.

Guideline 4 – Representatives in the dialogue

- 1.19. Competent authorities should consider inviting individuals, representing the competent authority and the statutory auditors or audit firms, who are knowledgeable, informed and empowered by their organisation or firm to exchange information relevant to the dialogue.
- 1.20. Competent authorities should consider the appropriate number and role of the participants, from both parties of the dialogue, taking into account the issues to be discussed during the dialogue and the particular nature and circumstances of the undertaking or undertakings subject to the dialogue.
- 1.21. Competent authorities should weigh the number of the participants in view of allowing for a relevant effective dialogue whilst safeguarding the confidentiality of the discussion's content. Competent authorities should ensure that the primary participants in the dialogue are a representative of the supervisory authority acting as team leaders and the key audit partners. Competent authorities should consider other relevant participants from the competent authority, and - in communication with the statutory auditors or audit firms - relevant participants from the statutory auditors or audit firms according to the topics, such as IT experts, accounting experts and actuarial or valuation experts.
- 1.22. Competent authorities should assess whether in particular circumstances and considering the issues to be discussed, trilateral meetings with representatives

from the undertaking, and in particular its audit committee, in addition to the dialogue envisaged in paragraphs 1.19 to 1.21, would be useful to achieve effective dialogue. Similarly, the competent authority may invite, where appropriate, competent authorities dealing with the supervision of financial markets or with public oversight of auditors. Herein confidentiality and professional secrecy requirements as set out in paragraph 1.8 of Guideline 1 should equally apply.

Guideline 5 – Frequency and timing of the dialogue

- 1.23. Competent authorities should consider scheduling regular dialogues as frequently as necessary to ensure the dialogue is effective, taking into account paragraph 1.10 of Guideline 1. Competent authorities should take into account the planning cycle of supervisory inspections and statutory audits to establish the most appropriate timing for dialogue in discussion with the other party of the dialogue.
- 1.24. Competent authorities should assess whether ad hoc dialogue is necessitated due to important issues that arise and require urgent clarification.
- 1.25. Competent authorities should regularly evaluate whether the frequency and timing chosen are appropriate and proportionate relative to the effect on its supervisory tasks or on the statutory audit in relation to the undertaking. Ensuring a proportionate approach, dialogues relating to insurance undertakings that are highly risky and that have an expected high impact in case of a given failure, competent authorities should consider holding meetings at least on an annual basis.

Guideline 6 – Dialogue with auditors or audit firms collectively

- 1.26. In order to promote a more efficient dialogue at the sectoral and national level, competent authorities should consider setting up regular dialogue with statutory auditor(s) collectively to allow an exchange of views on current and emerging developments, at least annually, where relevant. Similarly to the provision in paragraph 1.22 of Guideline 4, competent authorities may consider inviting appropriate, competent authorities dealing with the supervision of financial markets or with public oversight of auditors.
- 1.27. Competent authorities should ensure that no undertaking-specific information is shared in such meetings and that the same confidentiality and professional secrecy requirements as in individual dialogues, as specified in as set out in paragraph 1.8 of Guideline 1, apply.

Compliance and Reporting Rules

- 1.28. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16 (3) of the EIOPA Regulation, Competent Authorities and financial institutions shall make every effort to comply with guidelines and recommendations.

- 1.29. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 1.30. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
- 1.31. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

Final Provision on Reviews

- 1.32. The present Guidelines may be subject to a future review by EIOPA in accordance with the EIOPA Regulation.

Annex II: Impact assessment

Section 1. Procedural issues and consultation of interested parties

In accordance with Article 16 of EIOPA Regulation, EIOPA conducts analyses of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

The draft Guidelines and its Impact Assessment were subject to a public consultation. Stakeholders' responses to public consultation have been duly considered and confirmed the views as set out in this impact assessment.

Section 2. Problem definition

When analysing the impact from proposed policies, the impact assessment methodology is anchored to a baseline scenario as the basis for comparing policy options. This helps to identify the incremental impact of each policy option that was considered during the development of the policies. The aim of the baseline scenario is to explain how the current situation would evolve without additional regulatory intervention.

For the analysis of the potential related costs and benefits of the proposed guidelines, EIOPA has applied as a baseline scenario the effect from the application of the requirements of the Audit Directive and the Audit Regulation.

Article 12 (2) of the Audit Regulation contains the request for EIOPA to develop guidance to insurance supervisors for the establishment of an effective dialogue with auditors of supervised undertakings.

In line with the objective and the spirit of the Audit Directive and the complementing Audit Regulation, EIOPA arrived at a view that there is a problem of impaired, or not fully efficient or sufficient, audit quality, for which one of the notable causes is that there is an expectation gap regarding the scope of the audit and the audit report, which affects the perceived role of the auditor, which does not match the expectations of the stakeholders. There are indications that this issue is exacerbated by the experience that there is not sufficient communication between auditors and supervisors of public interest entities, which entails insurance or reinsurance undertaking. Even though supervisory authorities have the right to ask for ad hoc information in accordance with Article 35 (2) (c) of Directive 2009/138/EC and auditors have the obligation to report any fact or decision which is liable to constitute a material breach of laws, affect the ability of the company to continue as going concern or lead to a qualified audit report, according to Article 72 of Directive 2009/138/EC, those measures have not led to an active engagement between auditors and supervisors.

The lack of streamlined and well developed dialogue between auditors and supervisors is often regarded as a missed opportunity to use the auditor's work as a tool for financial stability purposes.

If the current state of communication between the two parties remains as is and would not be regulated at European level, one can imagine that the situation would

not improve. That is evidenced by the European Commission's research⁶ on the auditor's stances regarding their role in the financial crisis, which indicates denial of any wrongdoing.

On the other hand, EIOPA noticed that a number of its members are currently developing internal guidance or manuals to facilitate regular and effective communication with statutory auditors, which may, even though the initiatives are well-intended and welcome, lead to widening the gap and increase the current unlevelled playing field within Europe, which is to the detriment of the internal market.

Section 3. Objective pursued

The operational objective of the guidelines is to facilitate the establishment and the maintenance of effective dialogue between competent authorities supervising insurance undertakings and the statutory auditors and audit firms carrying out the statutory audit of those undertakings.

This objective corresponds to the overarching general objective in the Audit Directive to contribute to the efficient functioning of financial and non-financial markets by strengthening the market role of the audit profession: to provide relevant economic agents and the market with more reliable, transparent, meaningful and timely information at an acceptable cost about the veracity of financial statements of companies; these Guidelines are meant to operationalise the objective to clarify and define the role of the statutory auditors generally as well as with specific regard to public interest entities.

This objective also corresponds to the following general and specific objectives of the Solvency II Directive: enhance policyholder protection, advance supervisory convergence and encourage cross-sectoral consistency.

Section 4. Policy options

With the aim to meet the objective set out in the previous section, EIOPA has analysed different policy options throughout the policy development process. Considering current supervisory practices and the baseline as regulated by the Audit Regulation, none of the guidelines proposed are expected to have any material impact compared to the baseline. Nevertheless they are proposed for the purpose of clarification and achievement of a common understanding of the underlying policy.

These are the cases of the general approach of the Guidelines and in particular the requirement of an annual physical meeting in Guideline 5.

The section below reflects the most relevant policy options that have been considered in relation to the approach and Guideline 5. We have also listed relevant options which have been discarded in the policy development process.

Policy issue 1: Principle-based versus rules-based approach

⁶ See Commission staff working paper Impact Assessment: Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and a Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities, p. 24.

Policy option 1.1: A principle-based approach sets out the underlying idea, the goal and the objective of a policy and defines a more high-level concept in order to educate the actual approach implementing the provision and the underlying policy.

Policy option 1.2: A rules-based approach sets out the rules that are to be applied in specific, individual circumstances. The rules themselves implement the underlying idea of a policy, there is no scope for adjusting the treatment if the actual circumstances or the characteristics differ.

Policy issue 2: Determining the frequency of physical meetings

Policy option 2.1: The first option is not to determine the exact frequency of physical meetings.

Policy option 2.2: The second option is to determine the exact frequency of physical meetings.

Policy option 2.3: The third option is to require a proportionate approach for all dialogues whilst specifying the requirement to consider meeting physically at an annual basis for high risk cases.

Section 5. Analysis of impacts

Policy issue 1 Principle-based versus rules-based approach

Policy option 1.1: Principle-based approach

Considering that currently there is significant divergence in the communication between supervisors and auditors whereas some approached are highly regulated and other are very much dependent on the actual circumstances, this option provides supervisors with a common understanding about the goals and objectives of an effective dialogue as envisaged by the Audit Regulation. A principle-based approach provides supervisors to adapt the principles in a way to best address the circumstances that are specific in the legal and regulatory framework. This option mitigates the problem of finding strict regulations in a manner of "one size fits all" and at the same time allows supervisors and EIOPA to further develop best practices in this area. Therefore, EIOPA is convinced that a principle-based approach is probably the best initial step to achieve consistent supervisory practices regarding the regular interaction with auditors.

Analysis according to the expected impact on stakeholders:

EIOPA's analysis covered the effects on both supervisors and auditors. Whilst a principle-based approach allows a more tailored application at the national level, it also slightly increases the uncertainty of actual implementation for the auditors. At the same time a principle-based approach facilitates the further development of the national application on a cooperative basis for both supervisors and auditors.

This analysis came to the conclusion that there are no negative or explicit positive impacts on policyholder protection or any financial impact for stakeholders. Equally, EIOPA does not believe there is any significant impact on insurance undertakings.

Proportionality:

Clearly, a principle-based approach allows for the application of the proportionality principle, yet it does not, just like a rules-based approach, by its very nature determine a proportionate approach.

Policy option 1.2: Rules-based approach

A rules-based approach has the advantage that all known cases can be exactly regulated, yet that is equally its disadvantage as possibly not all cases or circumstances are known. Also, exact regulation of individual cases bears the risk that fairly similar circumstances may be treated differently. A rules-based approach is most appropriate for settled policy areas in a sense that each individual case can be clearly determined based on past experience. However, that is not necessarily the case for all Member States. Of course, EIOPA does not rule out that these circumstances may change in the future and a rules-based approach may be the most relevant to ensure a fully consistent, prescribed approach.

Analysis according to the expected impact on stakeholders:

EIOPA's analysis covered the effects on both supervisors and auditors. A rules-based approach mitigates the risk of a lack of clarity or the need to further interpret the regulation. However, it decreases the ability of both parties involved to best implement the objective of these Guidelines in a manner that suits the individual circumstances.

This analysis came to the conclusion that there are no negative or explicit positive impacts on policyholder protection or any financial impact for stakeholders. Equally, EIOPA does not believe there is any significant impact on insurance undertakings.

Proportionality:

A well-regulated rules-based approach allows for the application of the proportionality principle, yet it does not, just like a principles-based approach, by its very nature determine a proportionate approach. That said, a rules-based approach is prone to be challenged as being disproportionate, as it needs to regulate each case individually.

Policy issue 2: Determining the frequency of physical meetings

Policy option 2.1: not to determine the exact frequency of physical meetings

Considering the previous policy issue on a principle-based or rule-based approach, it may not be meaningful to regulate the frequency of actual physical meetings at all and leave it up to the judgement of both supervisors and auditors to meet when it seems relevant to meet.

Analysis according to the expected impact on stakeholders:

EIOPA's analysis covered the effects on both supervisors and auditors. It may be less intrusive not to set any regulation around the frequency of physical meetings, it would seem inconsistent with the conclusions of the European Commission's research⁷. Stakeholders clearly ask for increased communication, which can hardly be met by this option. This analysis came to the conclusion that there are neither positive impacts on policyholder protection nor any financial impact for stakeholders.

Proportionality:

The option not to regulate the frequency cannot be regarded as proportionate as it does not provide an objective or indication of a benchmark.

Policy option 2.2: determine the exact frequency of physical meetings

EIOPA considered setting an exact frequency of physical meetings, as indicated by the European Commission's research in this area. The European Commission came to the

⁷ See Commission staff working paper Impact Assessment: Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and a Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities, p. 158, 197, 245-246.

result that one annual meeting would cost 5,400 Euros and two envisaged bilateral meetings 10,800 Euros for the auditors only - not taking into account the costs to be expected at the level of the supervisor.⁸ The costs for supervisors have been assessed by the European Commission to be covered by general expenses and regular work. That means no additional costs can be expected for the supervisory authority for such a physical meeting to take place. Surely, any costs incurred at the level of the auditor can be expected to be passed-through to the insurance undertaking.

Analysis according to the expected impact on stakeholders:

EIOPA's analysis covered the effects on both supervisors and auditors. The additional costs - additional only if currently there are no annual or bi-annual physical meetings, as it is the case for many Member States - can be expected to be the ones as set out by the European Commission. There is a positive effect on consumer protection to be expected.

Proportionality:

To require an annual or a bi-annual meeting does not leave room for a tailored approach and a fully proportionate application.

Policy option 2.3: require a proportionate approach for all dialogues whilst specifying the requirement to meet physically at an annual basis for high risk cases

There is a third option which requires that there are regular physical meetings, which need to be held at a frequency that is proportionate to the risk assessment of the relevant insurance undertaking. In order to set a benchmark, high risk engagements would trigger at least one annual physical meeting between the relevant participants of both auditors and supervisors.

Analysis according to the expected impact on stakeholders:

The costs of a mandatory annual meeting would be the same as under policy option 2. However, supervisors and auditors could assess whether those costs are proportionate to the needs as determined by the characteristics of the engagement (which are not within the high risk category).

Therefore, the fixed costs of both supervisors and auditors would be potentially lower whilst the positive impact on policyholder protection should remain relatively high. Again, any costs incurred at the level of the auditor can be expected to be passed-through to the insurance undertaking.

Proportionality:

In terms of proportionality, this option provides the opportunity to apply a fully proportionate approach to fulfil the objective with a clearly set benchmark of at least one annual physical meeting.

Section 6: Comparison of options

Policy issue 1 Principle-based versus rules-based approach

The preferred policy option for this policy issue is policy option 1 the principle-based approach because at this stage and considering the diverging circumstances permits a tailored, consistent approach within all Member States. The rules-based approach

⁸ See Commission staff working paper Impact Assessment: Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and a Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities, p. 246.

exhibits too many risks of non-proportionate application which makes it unadvisable at this point in time.

The selection of the preferred option has required a trade-off between the potential of different interpretations and the freedom to choose the most appropriate solution for the national circumstances. More weight has been given to the positive and proportionate application by supervisors and auditors.

The comparison of options against a baseline scenario has been based on the current supervisory practices, which are highly divergent in this area.

Policy issue 2 Determining the frequency of physical meetings

The preferred policy option for this policy issue is policy option 3 to require a proportionate approach for all dialogues whilst specifying the requirement to consider meeting physically at an annual basis for high risk cases. The reasons for that are that such a proportionate approach with the establishment of a relevant benchmark fulfils the needs of supervisors and auditors to regularly meet and to apply a fully proportionate approach at the same time. The impact on consumer protection is equally high as a requirement to meet with all auditors at an annual basis, whilst reducing the financial impact on both parties.

The selection of the preferred option has required a trade-off between the potential of inconsistent application for the not-high-risk engagements and the potential for fully relevant and proportionate approach to the frequency of physical meetings. More weight has been given to the positive and proportionate application by supervisors and auditors.

The comparison of options against a baseline scenario has been based on the current supervisory practices, which are highly divergent in this area.

Section 7: Monitoring and evaluation

EIOPA believes that it is important to increase the interaction and communication between supervisors and auditors. One core indicator for that is the number and frequency of physical meetings between insurance supervisors and auditors of supervised undertakings.

By its very nature, it is hard to measure how much the application of the Guidelines will foster a relevant exchange of views and information between supervisors and auditors. Yet, regular physical meetings and relevant communication will definitely support the goals as set out in these Guidelines.

Annex III: Resolution of comments

Summary of Comments on Consultation Paper CP-16-002 Dialogue supervisor - statutory auditor

EIOPA would like to thank EIOPA Insurance and Reinsurance Stakeholder Group, Audit and Assurance Committee of Chartered Account, European Confederation of Institutes of Internal A, EY, Federation of European Accountants, German Chamber of Public Accountants (Wirtschaftsp, ICAEW, Insurance Europe, and KPMG IFRG Limited

The numbering of the paragraphs refers to Consultation Paper EIOPA-CP-16-002

No.	Name	Reference	Comment	Resolution
1.	EIOPA Insurance and Reinsurance Stakeholder Group	General Comment	<p>We are pleased to see that EIOPA is aiming to enhance the dialogue between auditors and insurance supervisors and we strongly support this goal. It would be of benefit for all parties involved, both supervisors and auditors, as well as preparers.</p> <p>.Nevertheless, it would be welcome if EIOPA could clarify that undertakings should always be the primary source of information.</p>	Agreed, this is highlighted in Guideline 1.9.
2.	Audit and Assurance Committee of Chartered Account	General Comment	<p>The Audit and Assurance Committee of Chartered Accountants Ireland (“the Committee”) welcomes EIOPA’s consultation paper CP-16-002. The Committee is supportive of the proposal for “Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those undertakings” (“the proposed guidelines”).</p> <p>The proposed guidelines mirror the intent of the agreed “Protocol between the Central Bank of Ireland and the Auditors of Regulated Financial Service Providers” (“the Auditor Protocol”) which has been in operation in Ireland since December 2011. The Committee notes that the experience of the auditing profession in Ireland has been positive with regard to the operation of Auditor Protocol and considers the framework which it creates to be of value in terms of providing clarity to all parties involved in the dialogue. It is our understanding that the Auditor Protocol framework in Ireland will continue in operation.</p> <p>We do not have specific comments in relation to individual guidelines or questions raised in the consultation paper.</p>	Agreed, the IE auditor protocol, which we understand is fully consistent with these EIOPA Guidelines, will remain applicable.
3.	European	General	The European Confederation of Institutes of Internal Auditing (ECIIA) is a confederation of	Noted.

	Confederation of Institutes of Internal A	Comment	<p>national associations of internal auditors speaking for the profession in the wider geographic area of Europe and the Mediterranean basin. It represents a membership base of over 40,000 internal audit professionals. The ECIIA is an associated organisation of the global Institute of Internal Auditors (The IIA), a professional body with more than 181,000 members in some 190 countries. Throughout the world, The IIA is recognised as the internal audit profession's leader in certification, education and research regarding internal auditing. The IIA also maintains the International Professional Practices Framework (IPPF) which includes the International Standards for the Professional Practice of Internal Auditing, the definition of internal auditing, the code of ethics, practice advisories and other guidance. (http://www.theiia.org/guidance/standards-and-guidance/interactive-ippf/.)</p> <p>For the entirely understandable reasons outlined in the EIOPA's consultation document, the draft guidelines focus on the relationship between the supervisors and the statutory auditors of insurance companies. Nevertheless, the role of internal auditors in those institutions, as the providers of independent assurance, advice and insight to the Audit Committee and the board on risk and internal controls, is an important part of the overall picture, as defined in the 3 lines of defence model summarised below.</p> <p>In this model, the third line of defence - internal audit - is responsible for ensuring that the first and second lines are functioning as designed. The Internal auditors review all the processes and analyse all the risks of the Insurance Company.</p> <p>Internal audit reports to the Audit Committee and shares information with the Statutory Auditors and the Regulators. The Audit Committee coordinates the missions and work of the Statutory Auditors and Internal Auditors. A good cooperation and an open communication are recommended to avoid duplication of work.</p> <p>For all these reasons, we recommend that the Supervisor also defines, in the future, the effective dialogue between competent authorities supervising insurance undertakings and the internal auditors in order to get an independent opinion about the internal controls, risk management and the governance of the insurance company.</p>	
4.	Federation of European Accountants	General Comment	<ol style="list-style-type: none"> 1. The Federation of European Accountants (the Federation, www.fee.be) is pleased to provide you below with its comments on EIOPA's Consultation Paper on the proposal for Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those undertakings (Consultation Paper, CP). 2. We welcome the CP and we express our support for the efforts to establish guidelines for an open, effective and efficient dialogue between the competent authorities supervising insurance undertakings (supervisors) and the statutory auditors as required in Article 12(2) of Audit Regulation (EU) 537/2014. 	Partially agreed, the Guideline's scope is the dialogue between statutory auditors and NCAs. The legal basis of

			<p>3. This is especially critical as it indicates that going forward, in addition to currently being statutory auditors of the financial statements of insurance undertakings, the involvement of auditors with regulatory and supervisory reporting for insurance undertakings is expected to become more and more important.</p> <p>4. In our view, the scope of the dialogues between supervisors and auditors will be determined by the scope of the audit. In that respect, we would like to stress the divergence that currently exists in terms of the scope of audit of insurers with respect to Solvency II requirements across different European jurisdictions and the differences in the interaction (and communication) between the supervisors and the external auditors. We published the results of our survey on the Scope of the auditor's involvement with the Solvency II regulatory reporting of insurance undertakings in the context of the EU Commission's "Call for Evidence: EU Regulatory Framework for Financial Services" (http://www.fee.be/images/publications/auditing/160129_response_EC_call_for_evidence_EU_regulatory_framework_for_FS.pdf) demonstrating the different requirements and practices across Europe. The results clearly indicate a high level of divergence in the new and/or proposed requirements from the national regulators which may create doubts about the reliability and quality of public disclosures across Europe. In some countries the National Competent Authorities (NCAs) are considering to expand the scope of the statutory audit, however, in some other countries the NCAs have decided to leave the decision for an audit of Solvency II reporting to the discretion of the insurance undertakings.</p> <p>5. Finally, it would be preferable if EIOPA and EBA ensure that the final forms of the guidelines regarding the communication between the supervisors and the auditors are aligned. This would assist in an effective and efficient implementation of the guidelines addressing similar issues across Europe, not least for entities with both banking and insurance activities.</p>	<p>the Guidelines is the Audit Regulation that defines the scope as the statutory audit of annual and consolidated financial statements, which excludes prudential public disclosures.</p> <p>EIOPA aims at full consistency with the corresponding EBA Guidelines.</p>
5.	German Chamber of Public Accountants (Wirtschaftsp)	General Comment	<p>The Wirtschaftsprüferkammer [Chamber of Public Accountants] is a corporation under German public law, whose members are all auditors (Wirtschaftsprüfer [German public accountants] and vereidigte Buchprüfer [German sworn auditors]) and audit firms (Wirtschaftsprüfungsgesellschaften [German public audit firms] and Buchprüfungsgesellschaften [German firms of sworn auditors]). It is headquartered in Berlin and responsible for its more than 21,000 members throughout Germany.</p> <p>The WPK is pleased to take this opportunity to comment on the Consultation Paper.</p> <p>We welcome the draft Guidelines as an instrument to support an effective, mutual dialogue between statutory auditors/audit firms and competent authorities supervising insurance/reinsurance undertakings according to Article 12 Para. 2 of the Audit Regulation</p>	Agreed.

			(EU) No. 537/2014.	
6.	ICAEW	General Comment	<p>1. ICAEW fully supports the objective of improving the communication between statutory auditors and competent authorities supervising insurance undertakings and believes that this can deepen and enrich both auditors' and supervisors' risk assessments. We agree that there is the opportunity for regulators to derive more benefit from the knowledge and experience auditors have about the financial institutions they audit. We welcome the continuing consultation on how this can be best achieved through sharing information.</p> <p>2. The importance of good communications and a good relationship between auditors and supervisors has long been promoted as it helps both parties achieve their overlapping but distinct objectives. To that extent it is a 'public good' as it serves the interests of wider society if these two key agents, auditor and supervisor, are able to share information pertinent to their respective roles.</p>	Agreed.
7.	Insurance Europe	General Comment	<p>Insurance Europe welcomes this opportunity to comment on the EIOPA Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those undertakings.</p> <p>While we acknowledge the general obligation in Art. 12 of Audit regulation, Insurance Europe does not see the benefits of having these guidelines as rightly outlined by EIOPA in its impact assessment in section 7 as: "...it is hard to measure how much the application of the guidelines will foster a relevant exchange of views and information between supervisors and auditors". Insurance Europe is particularly concerned that the value brought by the application of these guidelines will not compensate for the huge costs they will entail as undertakings will be charged for auditors time.</p> <p>More concretely, Insurance Europe has several concerns related to the content of the guidelines. In particular the scope, the remit of audit, the role given to auditors, the aim of statutory audit as compared to that of supervision, the reflection of the different governance structures across Europe, and the frequency and timing of the guidelines are areas which we question as follows:</p> <p><input type="checkbox"/> Scope of guidelines. The scope of these guidelines is not aligned with the empowerment set out in the Audit Regulation (Article 12). Auditors are empowered to report promptly any inconsistencies discovered while performing their mandatory audit of public-interest entities. They are not empowered to communicate directly with supervisors at the request of these and be the provider of information, which is precisely the focus of these guidelines.</p> <p><input type="checkbox"/> Remit of audit. These guidelines broaden the remit of audits beyond what the Audit</p>	Disagreed, the scope of the Guidelines is determined by Art. 12 (2) of the Audit Regulation and does not relate to reporting requirements based on Art. 12 (1) of the Audit Regulation or Art. 72 of the Solvency II Directive. The Guidelines do not affect the communication between NCAs and insurance undertakings.

		<p>regulation (Article 12) and the Solvency II Directive (Article 72) require. As such these guidelines go far beyond the aforementioned legal texts.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Role given to auditors. In asking auditors to communicate information directly to them, competent authorities create the risk that undertakings lose control of their own communication and information despite guideline 1 (paragraph 1.9). It should be made clear that undertakings should always be the primary source of information, and auditors should not substitute supervisors. <input type="checkbox"/> Aim of statutory audit and supervision. Statutory audit and supervision have different purposes and aims hence, there is and should remain a clear distinction between the tasks of the supervisors and the auditors' tasks. <input type="checkbox"/> Different governance structure. The guidelines should acknowledge that the undertakings' governance structure varies across Europe with significant implications for auditors' involvement and responsibilities in relation to management, supervisory board and audit committee. <input type="checkbox"/> Frequency and Timing. Overall, the Audit Regulation specifies that regular meetings should only take place for global systemic companies and only on industry level, not for specific companies. Consequently, the guideline may suggest regular meetings only to meet this purpose 	<p>Based on Art. 39 of the Audit Directive it is fair to assume that an audit committee exists in EU insurance undertakings.</p> <p>Art. 12 (2), subparagraph 2 does not specify the dialogue between supervisors and statutory auditors. It does set out a requirement for the ESRB, CEAOB and the auditors of systemically relevant entities to meet on an annual basis. It is explicitly mentioned that those meetings shall inform the ESRB. Obviously the ESRB is not</p>
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				competent in supervising insurance undertakings, which prevents the ESRB from being one of the two parties of the dialogue.
8.	KPMG IFRG Limited 15 Canada Square London E 14 5	General Comment	<p>We appreciate the opportunity to comment on the above Consultation Paper.</p> <p>We are pleased to see that EIOPA is focusing on enhancing communications between auditors and insurance supervisors and we strongly support this goal. It would be of benefit for all parties involved, both supervisors and auditors, as well as preparers.</p> <p>The stated objective of the proposed guidelines is to support EIOPA's member organisations in developing a consistent, appropriate and proportionate supervisory approach. We support this objective and agree that effective communication can support the quality of insurance supervision. However, effective communication can support also the quality of the external audit, thus the competent authority and the statutory auditor have a mutual interest in fostering regular communication of useful information. Therefore, we recommend the inclusion of an additional objective of promoting high-quality audits and explaining how competent authorities should support this objective in their communication of information to statutory auditors.</p>	Disagreed, the objective of the Guidelines is set out in the Audit Regulation and its accompanying documents.
9.	EIOPA Insurance and Reinsurance Stakeholder Group	1.1	<p>1.1 points out the purpose of strengthening supervision. We recommend including an additional objective of promoting high-quality audits and explaining how competent authorities should support this objective in their communication with auditors.</p> <p>The guidelines may clarify that, auditors cannot relieve supervisors from their own duties, and as such should not replace the (re)insurance undertaking itself as the primary source of information.</p>	See response to comments 1 and 8.
10.	Federation of European Accountants	1.1	<p>6. In our view, the final form of guidelines should be aiming at both: (i) strengthening the supervision of insurance and reinsurance undertakings and (ii) promoting a high quality audit of insurance and reinsurance undertakings. We therefore suggest that EIOPA adds a reference to a high quality audit as the CP only refers to its objective as strengthening the supervision of insurance and reinsurance undertakings.</p>	See response to comment 8 and – partially agreed - please see

			<p>7. Furthermore, in order to establish an effective dialogue, the Federation believes that a “two-way communication” is needed. We find that the guidelines should equally address communication from supervisors to statutory auditors, as this will contribute to enhancing audit quality.</p>	<p>the legal basis, Art. 12 (2), that refers to the responsibility for compliance that rests with both parties. However, the Guidelines’ addressees are NCAs.</p>
11.	Insurance Europe	1.1	<p>As there are no tasks set out in Article 12(2) of the Audit Regulation it is assumed that references to tasks in the empowerment refer to Article 12(1). Hence, although Article 12(2) of the Audit Regulation empowers EIOPA to develop guidelines on the effective dialogue between supervisors of insurance undertakings and audit firms, the remit of this empowerment is circumscribed by Article 12(1) of the Audit Regulation concerning auditors’ duty to report promptly to the insurance supervisor. The aim of Article 12(1) of the Audit Regulation is to report any fact or decision concerning the undertaking which the auditor has become aware of when performing its tasks and which could result in:</p> <ul style="list-style-type: none"> <input type="checkbox"/> any material breach of the laws, regulations or administrative provisions governing the authorization and pursuit of activities in such public-interest entities (the insurance undertaking) <input type="checkbox"/> material threat or doubt concerning the continuous functioning of the public-interest entities (the insurance undertaking) <input type="checkbox"/> a refusal to issue an audit opinion on the financial statements <p>This list is further extended in Article 72(1)(d) and (e) of the Solvency II Directive, where the auditor also has a duty to report any concerns that could result in:</p> <ul style="list-style-type: none"> <input type="checkbox"/> non-compliance with the SCR <input type="checkbox"/> non-compliance with the MCR <p>Hence, the communication line is one-sided. Auditors have a duty to duly report to the supervisors any concerns arising when performing their mandatory audits of an (re)insurance undertaking. Auditors should not be the direct source of information, and</p>	<p>Disagreed, see response to comment 7.</p>

			should not substitute supervisors as it is the tasks and duties of supervisors to supervise the (re)insurance undertaking. The dialogue should therefore be limited to the actual tasks of the auditor.	
12.	KPMG IFRG Limited 15 Canada Square London E 14 5	1.1	We refer to our general comment, recommend including an additional objective of promoting high-quality audits and explaining how competent authorities should support this objective in their communication with auditors.	Disagreed, see response to comment 8.
13.	German Chamber of Public Accountants (Wirtschaftsp)	1.2	<p>What seems particularly positive to us is that the draft Guidelines are principle-based and do not specify details to issues (No. 1.14.) and timing (No. 1.23. – 1.25.) of the dialogue. When incorporating the Guidelines into their practices the competent authorities should ensure that their internal rules provide a scope to involve the public auditor’s opinion on which and how much information is to be exchanged and with regard to the frequency and timing of the dialogue.</p> <p>As other EU legislation already sets out legal requirements on statutory auditors to report to competent authorities (cf. No. 1.1.), we welcome that the Guidelines regard both parties of the dialogue as obliged to share information. That is the basis for an effective mutual dialogue.</p>	Agreed.
14.	ICAEW	1.2	<p>3. Given the fact that EIOPA has investigated the current supervisory practices in close cooperation with the European Banking Authority (EBA) we recommend that EIOPA and EBA ensure that the final form of the guidelines about communication with the auditors would be aligned. This would assist in an effective and efficient implementation of the guidelines addressing similar issues across Europe.</p>	Agreed, EIOPA aims at full consistency with the corresponding EBA Guidelines.
15.	EIOPA Insurance and Reinsurance Stakeholder Group	1.6	The consultation paper does not propose an application date yet. EIOPA should give the competent authorities sufficient time to establish the dialogues and relating frameworks.	Agreed, the effective date is set for 31 May 2017.
16.	EY	1.6	We do not think that applying the Guidelines mid-audit cycle is helpful or appropriate. In our view, the Guidelines should apply from Q2, 2017 i.e., after the 31 December year-end reporting and in preparation for implementation during the 2017 audit cycles.	See response to comment 15.
17.	Federation of European	1.6	<p>8. We suggest that EIOPA ensures that there is adequate time between the finalisation of these guidelines and the effective date, so that the NCAs have sufficient time to</p>	See response to comment

	Accountants		implement these guidelines in the context of the national practices for the audit of insurance undertakings and dialogues in relation to them established already.	15.
18.	German Chamber of Public Accountants (Wirtschaftsp)	1.6	EIOPA did not mention when it expects the Guidelines to be applicable. We suggest that the finalised Guidelines will be applicable after an adequate period (not before the beginning of 2017) to ensure that there is sufficient time to implement them into the national practices.	See response to comment 15.
19.	Insurance Europe	1.6	It would be useful to know when the guidelines apply from, especially as Solvency II has just entered into force.	See response to comment 15.
20.	EIOPA Insurance and Reinsurance Stakeholder Group	Guideline 1	Guideline 1 is rather defining the « framework » for the communication between supervisors and auditors than the « objective ». We suggest to consider the wording.	Agreed, it has been reformulated in "approach".
21.	Federation of European Accountants	Guideline 1	9. In order to achieve consistency with EBA's draft guidelines, we propose that the name of Guideline 1 changes to include a reference to the "framework of the communication".	See response to comment 20.
22.	Insurance Europe	Guideline 1	<p>It should be stated very clearly in the first guideline that supervised (re)insurance undertakings are the primary source of information for supervisory and statutory audit purposes, and supervisors cannot contact auditors without informing the undertaking first. In addition, after such dialogue have taken place, and unless the insurance undertaking did attend the dealings, the competent authorities must notify it of the conversation and inform it at least in broad terms of the content possible conclusions and follow-up actions.</p> <p>Furthermore, we suggest adding a section that states that the competent authority shall issue a written decision addressed to the company, defining scope, frequency and extent, and motivation of the intended future dialogues. Before issuing the final decision, competent authority shall further issue a draft, giving the insurance company the opportunity to provide comments, which shall be taken into consideration when issuing the final decision. If requested by the insurance company, the final decision shall be issued in a manner that allows a formal appeal in accordance with national law."</p>	Partially agreed, Guideline 1.9 clearly states that the insurance undertaking remains the main source of information.
23.	KPMG IFRG Limited 15 Canada Square London E 14 5	Guideline 1	Guideline 1 is rather defining the «framework» for the communication between supervisors and auditors than the «objective». We suggest to consider the wording.	See response to comment 20.

24.	EY	1.7	<p>For communication to be open and constructive, as well as flexible, it is important that the Guidelines are not seen as creating risk or liability issues for either competent authorities or auditors (particularly in EU Member States where auditors can be subject to criminal sanction or imprisonment). The Guidelines per se. should not create any additional duty of care or increase the responsibilities of either auditors or competent authorities and it would be helpful if the proposal for Guidelines could clarify this point and “hold harmless” both competent authorities and auditors i.e.:</p> <p>shared information should inform the auditor or competent authority’s judgement but reliance should not be placed on the information as a matter of fact, as it may be based on subjective judgements;</p> <p>the party receiving the information is responsible for assessing the extent to which it is appropriate to place reliance on shared information;</p> <p>shared information should be used to prompt questions if it does not accord with the receiving party’s own judgement, but differences of opinion may still be valid.</p>	Partially agreed, this is covered by Art. 12 (3) of the Audit Regulation.
25.	EY	1.8	<p>We note that this paragraph of the proposal for Guidelines provides that: “ competent authorities should ensure that any information exchanged in the dialogue remains confidential and does not constitute a breach of any contractual or legal restriction on disclosure of information in accordance with Article 12 (3) of Regulation 537/2014 or Article 68 of Directive 2009/138/EC.” Notwithstanding, it will be important to ensure that communications under the Guidelines would not contravene auditors’ duties of confidentiality or require an auditor to communicate information in breach of any EEA or non-EEA legal requirements (such as any confidentiality requirements for groups with operations outside the EU.</p>	Partially agreed, requirements based on Art. 12 (1) of the Audit Regulation remain unaffected by the Guidelines.
26.	Federation of European Accountants	1.8	<p>10. We would like to emphasize the importance of the fundamental principle of confidentiality of the auditor which is included in the auditors’ professional ethical standards. Any information obtained by the auditor in the course of an audit of financial statements cannot be disclosed to other parties (including supervisors), unless it is permitted or required by law. Notwithstanding the provisions foreseen in the Audit Regulation and Directive 2009/138/EC of 25 November 2009 (Solvency II Directive), the legal requirements on professional secrecy and on exchange of information between auditors and financial regulators vary across Europe and therefore we strongly suggest that EIOPA, maybe together with EBA and ESMA, coordinates with the NCAs to identify those differences and assess whether or not those differences would impose any obstacles to an effective and efficient communication between auditor(s) and supervisor(s).</p>	Noted. This is outside the scope of these Guidelines.

			<p>11. The cooperation between European Supervisory Authorities (ESAs) and NCAs is particularly relevant in this area as the practical application of the legal requirements across Europe can lead to further discrepancies in the communication between auditor(s) and supervisor(s).</p>	
27.	German Chamber of Public Accountants (Wirtschaftsp	1.8	<p>We welcome the clarification that any information exchanged does not constitute a breach of contractual or legal restriction on disclosure of information (Article 12 Para. 3 of the Audit Regulation).</p> <p>German public accountants and sworn auditors are subject to confidentiality according to § 43 Para. 1 Sentence 1 of the German Public Accountant Act (Wirtschaftsprüferordnung) and § 9 and § 10 of the German Professional Charter (Berufssatzung WP/vBP). Article 23 of the Audit Directive 2006/43/EC of May 17, 2006 as well as § 323 Para. 1 Sentence 1 of the German Commercial Code (Handelsgesetzbuch) regulate that duty with regard to public auditors. A breach of that duty is also a criminal offence according to § 203 and 204 of the German Criminal Code (Strafgesetzbuch).</p> <p>Confidentiality rules ensure that all information and documents to which a statutory auditor has access when carrying out a statutory audit are protected (Article 23 Para. 1 of the Audit Directive). The professional duty of confidentiality aims to protect the client's and the public's trust in the accounting profession and is the basis of an effective public audit. It enables the extensive disclosure of facts and circumstances within the relationship of the audited entity and its auditor and therefore contributes to improving the quality of the auditor's work from which the stakeholders and the public benefit. Overriding confidentiality may run the risk of creating inappropriate disincentives for the audited entity for the disclosure of certain information and circumstances resulting in a decrease of information provided. In other words, the relationship of the auditor and the audited entity might be affected negatively.</p>	Partially agreed, Guideline 1.8 addresses this issue.
28.	EY	1.9	<p>We welcome the statement that "Competent authorities should ensure that the supervised insurance or reinsurance undertaking remains the main source of information for supervisory and statutory audit purposes and that the information gathered in the dialogue does not substitute its work." It is important that the scope of the information auditors will be asked to communicate is clear and arises from, or relates to, statutory audit work i.e. the focus should be on information which is logically available as part of, and consistent with, the audit process. Requests for financial or other information from the regulated firms should be made directly to the insurance undertakings.</p> <p>As a general observation, we would also note that using auditors to obtain information from</p>	Partially agreed, the scope of the effective dialogue is the statutory audit of the annual and consolidated financial statements.

			<p>insurance undertakings that competent authorities could obtain directly, is likely to be an expensive source of data.</p> <p>In addition, it is important that references to “information sharing” are not interpreted as authorising competent authorities to use the Guidelines instead, or in lieu, of statutory information gathering powers to request the auditors to carry out additional work or as substitute for internal supervisory resources. Equally, we do not believe that the Guidelines should be used as a means of introducing long-form reporting.</p> <p>At last, considering the new set of information to be disclosed under the new Solvency 2 regime, and the importance that this set of information will have in the accomplishment of supervisory activities, we would like to draw attention to the fact that the legal obligations to Audit the Solvency 2 reporting are very diverse across jurisdiction inside the European Union.</p> <p>In our view, these Guidelines should be based on a homogeneous obligation to audit Solvency 2 reporting so as to achieve two goals :</p> <p>ensure that supervisors and auditors of insurance undertakings are focussing on identical information</p> <p>ensure a level playing field among insurance undertakings in terms of costs and audit firms in terms of obligations.</p>	
29.	German Chamber of Public Accountants (Wirtschaftsp	1.9	We welcome that the supervised insurance/reinsurance undertaking remains the main source of information. That also ensures the trusting relationship between the auditor and the audited entity.	Agreed.
30.	EIOPA Insurance and Reinsurance Stakeholder Group	1.10	<p>1.10 requires a «risk-based» approach. Since the perspective on risk is different for auditors than for supervisors due to different objectives, it might be helpful to clarify how risk should be defined.</p> <p>Apart from riskiness, complexity and size may determine the frequency and depth of communication. We therefore suggest to use the boarder term « proportionate approach », as used in the corresponding EBA draft guideline.</p>	Partially agreed, these Guidelines address insurance supervisors, which according to Art. 29 of the Solvency II Directive shall apply a risk-based

				<p>approach. Proportionality refers to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.</p>
31.	EY	1.10	<p>We welcome the risk-based approach to be applied by competent authorities. In this respect, we would recommend clarifying the risks factors that should be taken into account in this assessment as well as the risk classification methodology to be used.</p> <p>We also believe that to achieve the objectives of the proposal for Guidelines efficiently and in line with the principle of proportionality, the competent authorities and auditors of all insurance undertakings will need to tailor the elements of communication – and also their expectations - to an insurance undertaking’s size, internal organisation and nature, scope and complexity of their activities.</p> <p>To further guard against a ‘one-size fits all’ approach being adopted, it may be helpful for competent authorities and auditors to discuss and agree a communication plan – including whether specific communication is to be used - before the start of each audit cycle</p>	<p>See response to comment 30.</p>
32.	Federation of European Accountants	1.10	<p>12. Paragraph 1.10 refers to a “risk based” approach that needs to be followed by the NCAs, however it does not define the factors that should be taken into account. Given how the different objectives of audit and supervision affect the assessment of risk we suggest that EIOPA better articulates this point. In addition we note that EBA’s draft guidelines only refer to “a proportionate approach” (paragraph 20) which we believe better fits such guidelines.</p>	<p>See response to comment 30.</p>
33.	ICAEW	1.10	<p>4. We agree that the elements of communication should be proportionate with the insurance undertakings’ size, internal organisation and nature, scope and complexity of their activities. However we feel the need to emphasise that this needs regular monitoring and the elements of communications need to be adaptable enough to allow for unplanned events. We feel that the principle as put forth is sensible, and of suitably high level to allow proportionate implementation based on the level of risk associated with the insurance</p>	<p>Agreed, this is addressed by Guideline 1.7.</p>

			undertaking.	
34.	Insurance Europe	1.10		
35.	KPMG IFRG Limited 15 Canada Square London E 14 5	1.10	Guideline 1.10 requires a «risk-based» approach. Since the perspective on risk is different for auditors and for supervisors due to different objectives, it might be helpful to clarify how risk should be defined. Apart from riskiness, complexity and size may determine the frequency and depth of communication. We therefore suggest to use the broader term «proportionate approach», as used in the corresponding EBA draft guideline.	See response to comment 30.
36.	EIOPA Insurance and Reinsurance Stakeholder Group	1.11	<p>In order ensure effective communication, auditors should be protected from disciplinary proceedings, prosecution and liabilities when disclosures are made in good faith between competent authorities and statutory auditors. Article 12(3) of the Audit Regulation attempts to deal with this by providing that ‘good faith’ disclosures under Articles 12(1) or (2) “shall not constitute a breach of any contractual or legal restriction on disclosure of information.” We also note that engagement letters between statutory auditors and clients should seek consent to such types of disclosure. Nonetheless, complications may arise where there is a non-EEA law or regulation which has the potential to prohibit, restrict or open the possibility of legal or regulatory action in connection with a disclosure by a statutory auditor as envisaged in the guidelines. Such circumstances may arise if, for example, the information originates from a component audit in a non-EEA jurisdiction. In such cases, Article 12(3) may not provide sufficient protection against action outside the EEA for a breach of a non-EU law.</p> <p>EIOPA may encourage competent authorities to consider this issue and develop appropriate mechanisms to facilitate resolution of such issues should they arise. It may also be useful for EIOPA to engage with its peers outside the EEA to consider whether, and if so, how, legal or regulatory mechanisms can continue to evolve to ensure effective protection.</p>	Noted, this issue seems out of the Guidelines’ scope.
37.	Federation of European Accountants	1.11	13. We raised our comments regarding confidentiality above (paragraph 1.8).	See response to comment 26.
38.	KPMG IFRG Limited 15 Canada Square London E 14 5	1.11	<p>To ensure frank communication it is also essential to have effective protections in place so that communications are confidential and protected from disciplinary proceedings, prosecution and liabilities when disclosures are made in good faith between competent authorities and statutory auditors.</p> <p>In respect of statutory auditors, Article 12(3) of the Audit Regulation attempts to deal with this by providing that ‘good faith’ disclosures under Articles 12(1) or (2) “shall not constitute a breach of any contractual or legal restriction on disclosure of information.” We consider that Article 12(3) goes a very long way to ensuring effective protections are in</p>	See response to comment 36.

			<p>place. We also note that engagement letters between statutory auditors and clients should seek consent to such types of disclosure.</p> <p>Nonetheless, we note that complications may arise where there is a non-EEA law or regulation which has the potential to prohibit, restrict or open the possibility of legal or regulatory action in connection with a disclosure by a statutory auditor as envisaged in the proposed guidelines. Such circumstances may arise if, for example, the audit client is dual listed, or if the information originates from a component audit in a non-EEA jurisdiction. In such cases, the shield of Article 12(3) may not provide sufficient protection against action outside the EEA for a breach of a non-EU law.</p> <p>We note that such conflict of laws questions are often not straightforward. Our recommendation therefore is that EIOIPA, together with EBA, should encourage competent authorities to consider this issue and develop appropriate mechanisms to facilitate resolution of such issues should they arise. It may also be useful for EIOIPA and EBA to engage with its peers outside the EEA to consider whether, and if so, how, legal or regulatory mechanisms can continue to evolve to ensure that, at a global level, effective protections are in place for both statutory auditors and competent authorities in respect of disclosures.</p>	
39.	Insurance Europe	Guidelines 2	Art. 72 (1) of the Solvency II Directive and Art. 12. (1) of the Audit regulation establish information requirements of auditors or audit firms towards supervisory authorities. There is no information requirement of supervisory authorities towards auditors or audit firms foreseen. Hence Guideline 2 should be amended to reflect this.	Disagreed, the requirement to establish an effective dialogue is the basis for the exchange of information.
40.	German Chamber of Public Accountants (Wirtschaftsp	1.12	We support the proposed proportionate approach (cf. also 1.10) as it implicates that only appropriate information will be exchanged. That may lead to less costs and efforts for the parties of the dialogue as well as for audit clients who usually have to pay for any additional work of their auditors (cf. Section 6, policy issue 2, policy option 2.2).	Agreed.
41.	Insurance Europe	1.12	According to the guideline "relevant information" shall be exchanged. But it is not defined, what is deemed "relevant". The information to be exchanged should be limited to information referred to in Article 72 of the Solvency II Directive, cf. comment on 1.14.	See response to comment 39.
42.	EIOIPA Insurance and Reinsurance	1.13	1.13 asks the CA to address issues and information to be shared. The corresponding draft guideline by EBA is more specific, suggesting a list is prepared and consulted with auditors	Disagreed, EIOIPA

	Stakeholder Group		before communication. We suggest to amend the EIOPA guideline accordingly to increase the effectiveness of the dialogue.	believes that a principle-based approach is better suited at this point in time, as corresponding supervisory practices are currently less developed in the insurance sector.
43.	EY	1.13	We believe that the Guidelines could include more detail or illustrations on the nature and extent of information to be exchanged, as exemplified in paragraph " 2.4 Definitions" and " Appendix I" of EBA Consultation Paper EBA/CP/2015/17. This should include examples for information provided to the auditors by the authorities (e.g. best practice, interpretation of principles, new regulatory initiatives).	See response to comment 42.
44.	Federation of European Accountants	1.13	14. We believe that in order to enhance the effectiveness of the communication, the NCAs and the statutory auditors should agree on a list of issues for discussion. This principle has been proposed in paragraph 28 of the corresponding EBA Consultation Paper.	Agreed, such a reference has been added.
45.	German Chamber of Public Accountants (Wirtschaftsp	1.13	See 1.14	
46.	ICAEW	1.13	5. In the UK ICAEW worked with the Bank of England, Financial Services Authority and audit firms to develop a code of practice for the relationship between external auditors and supervisors, which was issued by the FSA in 2011. This was adopted by the Prudential Regulation Authority and the Financial Conduct Authority when they assumed their responsibilities. The code of practice describes expectations on the nature of the relationship and calls for monitoring of the quality of this relationship as well. It also sets out a standard agenda for bilateral meetings which makes clear to supervisors where they are expected and permitted to exchange views; it will contribute to the quality of external audits as well.	Noted.

47.	Insurance Europe	1.13	<p>Auditors are not supervisors. It is questionable for supervisors to leverage on auditors findings unless these are reported by the auditors in their function as whistle-blowers.</p> <p>In any case, it should be ensured that competent authorities may not request or rely on auditors carrying specific audit actions to produce information for dialogue purposes. In other words, auditors should only engage in dialogue based on the information they acquire during their normal audit activities.</p>	Agreed.
48.	KPMG IFRG Limited 15 Canada Square London E 14 5	1.13	<p>With respect to the issues and information to be shared, the corresponding draft guideline by EBA is more specific, suggesting a list is prepared and consulted with auditors before communication. We suggest to amend the EIOPA guideline accordingly to increase the effectiveness of the dialogue.</p>	See response to comment 42.
49.	EIOPA Insurance and Reinsurance Stakeholder Group	1.14	<p>1.14 points out that competent authorities should assess which information is relevant for the supervision of the undertaking and may request relevant information from the statutory auditor(s) or audit firms accordingly.</p> <p>It is important to emphasize that the information auditors share with competent authorities (and vice versa) should be limited to and consistent with the respective audit scope. Hence, as the audit scope might locally differ, competent authorities should define relevant areas in accordance with their national law.</p> <p>In its consultation paper on the same topic, EBA has included an Annex, listing examples of issues on what information could be shared. This list is more extensive and illustrative. We suggest that EIOPA follows the same format.</p>	See response to comment 42.
50.	EY	1.14	<p>We believe that the Guidelines could include more detail or illustrations on the nature and extent of information to be exchanged, as exemplified in paragraph " 2.4 Definitions" and " Appendix I" of EBA Consultation Paper EBA/CP/2015/17. This should include examples for information provided to the auditors by the authorities (e.g. best practice, interpretation of principles, new regulatory initiatives).</p>	See response to comment 42.
51.	Federation of European Accountants	1.14	<p>15. We would like to point out that the current framework for the statutory audit of financial statements of insurance undertakings in 25 out of the 28 EU member states is the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB) (http://www.fee.be/images/MA_ISA_in_Europe_overview_150908_update.pdf). As these high quality standards should be considered as the starting point for any communication between supervisors and auditors it would be worth referring to them for consistency.</p> <p>16. In our view, the nature of the relevant information to be requested by the NCA</p>	Partially agreed, the term has been changed to "audit-related documents".

			<p>from the statutory auditor should depend on the scope of the audit. However, as already mentioned above (in our general comments), we note that the divergence in the scope of audit in the new and/or proposed requirements from the national regulators might affect the scope of the communication between supervisors and auditors. For instance in those countries where the Solvency II balance sheet is not integrated in a mandatory audit, the statutory auditors cannot include any matters relating to the Solvency II balance sheet in the communication with the supervisor. To address this, we suggest that EIOPA clarifies in the CP that the scope of communication should be defined by the scope of the audit.</p> <p>17. Furthermore, we have concerns regarding the reference to “audit documentation” at the end of paragraph 1.14. Audit documentation is prepared only for the purpose of forming an audit opinion on the financial statements, and therefore its use in the context of these guidelines would not be appropriate. In addition, in our view, this would create additional barriers to the communication as it might be seen as breaching the confidentiality duty between the auditor and the insurance undertaking. We strongly suggest that EIOPA removes the reference to “other audit documentation” from paragraph 1.14.</p> <p>18. As already stated above, it would be preferable if EIOPA and EBA ensured that the final forms of guidelines on this matter are as closely aligned as possible.</p>	
52.	German Chamber of Public Accountants (Wirtschaftsp	1.14	<p>The enumerated areas of information provide the authorities an ample scope when incorporating the Guidelines into their practices. They can request a broad range of information that does not only refer to the audit process. According to No. 1.13 the authority should promote the auditor’s active contribution to the selection of relevant issues and information to be shared. We are concerned that authorities do not consult the auditor on the issue of which and how much information is to be disclosed. If an authority does not request specific (proportional) information the auditor has to decide if information provided to the authority is actually relevant to the supervisory task (cf. No. 1.12.). Despite Article 12 Para. 3 of the Audit Regulation there are liability risks for the auditor as there is no guarantee that in a lawsuit a court also considers that information with no relevance to the supervisory task was provided in good faith.</p> <p>We therefore propose to use „have to“ instead of „should“ („competent authorities have to promote statutory auditors’ …“) in No. 1.13 (Sentence 2). Authorities and auditors should agree on a list of issues to be discussed.</p> <p>In addition, the draft Guidelines do not involve any legal consequences in case of disagreements between authorities and auditors with regard to the relevance of information to the supervisory task.</p> <p>As mentioned in No. 1.1., the Solvency II Directive already sets out legal requirements on</p>	<p>Partially agreed, see responses to comments 7 and 44.</p> <p>EIOPA Guidelines follow legal drafting requirements, which necessitate the use of “should” in these cases.</p> <p>Own funds have been reworded to “capital”.</p>

		<p>statutory auditors to report facts to competent authorities. According to that Directive auditors have to report audit related information (cf. Article 72 of the Solvency II Directive). To achieve the objective of the draft Guidelines (to improve the communication between competent authorities and auditors) it is sufficient to limit the information exchanged in the mutual dialogue to audit related matters. As an example, information with regard to the non-accounting-related internal control system is not part of the audit itself and therefore should not be requested by competent authorities.</p> <p>We therefore propose to limit all information to be provided by auditors to the aforementioned and other legal reporting duties in the audit report (Article 10 of the Audit Regulation, § 322 of the German Commercial Code (Handelsgesetzbuch – HGB)), the additional report to the audit committee (Article 11 of the Audit Regulation) and the report to supervisors (Article 12 Para. 1 Subpara. 1 a) to c) of the Audit Regulation). Furthermore, German auditors have to prepare a detailed report („Prüfungsbericht“ according to § 321 of the German Commercial Code, in Germany translated as long-form audit report) that also includes all relevant audit information.</p> <p>Referring to the areas in detail:</p> <ul style="list-style-type: none"> <input type="checkbox"/> corporate governance: The information is based on the personal view of an auditor and does not refer directly to the audit process. We question the purpose of that requirement as this is not part of the audit itself and the above mentioned audit reports. Providing that information could affect the relationship of the auditor and the audited entity negatively. <input type="checkbox"/> internal controls: According to the German regulation for audit reports (Prüfungsberichterordnung) a German auditor only has to report on the accounting-related internal control system in his detailed report. That (limited) information should be subject of the dialogue with the competent authorities. <input type="checkbox"/> going concern assumption: The going concern assumption should be discussed between the auditor and the audited entity and is part of the audit report (Article 10 of the Audit Regulation). Additional information should be requested directly from the entity (cf. No. 1.9). <input type="checkbox"/> audit approach: The audit approach is part of the above mentioned audit report. <input type="checkbox"/> communication with the administrative, management or supervisory body and the undertaking’s audit committee: We question the exchange of that information as far as not only the topics of the communication but also its detailed content are to be reported. Providing that information could affect the relationship of the auditor and the audited entity negatively. 	
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			<input type="checkbox"/> valuation and the appropriateness of own funds: That information is provided in and should be limited to the detailed report and/or the annex of annual accounts. <input type="checkbox"/> investments: That information is given in and should be limited to the detailed report and/or the annex of annual accounts. <input type="checkbox"/> financial statements and other audit documentation: The meaning of that point is unclear. Financial statements should to be requested directly from the audited entity (cf. No. 1.9).	
53.	ICAEW	1.14	<p>6. The recommended procedures would also help EIOPA to enable European supervisors and auditors to enhance the quality of their dialogue. Supervisory practices vary across member states and a guidance issued by EIOPA could impede a level playing field between insurance undertakings. The scope and terms of this relationship can be determined in individual jurisdictions and should be clear to both the supervisor and the external auditor – for example, through guidance issued by the insurance supervisory authority.</p> <p>7. We have concerns regarding the suggestion in paragraph 1.14 that supervisors would have access to audit documentation. The audit documentation is prepared to enable the auditors to form and audit opinion on the financial statements only and its use would not be appropriate in the context of these guidelines. Furthermore this would compromise the confidentiality between auditors and insurance undertakings. We recommend that the wording “other audit documentation” is removed from the final text of the guidelines.</p>	See response to comment 51.
54.	Insurance Europe	1.14	<p>The wide scope of potential relevant issues subject to the dialogue seems to be oblivious of the restrictions imposed by the bounds of professional secrecy. The principle of confidentiality and professional secrecy requires an auditor or audit firm to conceal the information entrusted by the audited entity and not to divulge it to third persons including supervisors unless legal acts commit the auditor to do so. Consequently, the auditor of an insurance company is only discharged from a breach of confidentiality restrictions when submitting information referred to in Article 72 of the Solvency II Directive. However, the number and range of issues addressed in guideline 2 go way beyond the limitations of Article 72 and would result in a potential violation of the auditor’s secrecy obligations.</p> <p>Furthermore, it is questionable whether competent authorities are allowed to share undertaking-related information collected in the course of exercising their duties, with the auditor.</p> <p>Auditors are required to whistle blow as soon as they become aware of inconsistencies in the audited undertaking and are held liable for not performing their job. Hence, they have a vested interest in duly informing the supervisors.</p>	See response to comment 39.

			<p>If no information is reported to the supervisors it means that the auditor in performing their duties has not come across any inconsistencies worth reporting. It seems utterly pointless for supervisors randomly asking for information they deem "relevant" – especially taking into account that undertakings will have to pay for this "effective dialogue" as stated in the Impact Assessment, section 5. In particular, the phraseology used with "...may cover, but are not limited to", must be much changed to delineate clearly and in a limitative way the information competent authorities can request.</p> <p>It is important to emphasize that the information auditors share with competent authorities (and vice versa) should be limited to and consistent with the respective audit scope. Hence, as the audit scope might locally differ, competent authorities should define relevant areas in accordance with their national law</p>	
55.	<p>KPMG IFRG Limited 15 Canada Square London E 14 5</p>	1.14	<p>The list of relevant information requested by the supervisor from the auditor includes "valuation and appropriateness of own funds". In those jurisdictions, where the solvency balance sheet is not integrated in a mandatory audit, the statutory auditors cannot cover this area for exchange purpose with the supervisor. We recommend to specify that the nature of information exchanged by auditors is information that is in the scope of their statutory audit.</p> <p>In its consultation paper on the same topic, EBA has included an Annex, listing examples of issues on what information could be shared. This list is more extensive and illustrative. We suggest that EIOPA follows the same format.</p>	See response to comment 52.
56.	<p>EIOPA Insurance and Reinsurance Stakeholder Group</p>	1.15	<p>1.15 refers to the form of information « available at different stages in the audit ». We suggest to clarify, that the supervisor cannot have any access to the statutory auditor's working papers.</p> <p>In addition, the supervisor should inform the auditor before the completion of the audit and in any case when a significant matter has occurred or been revealed that might affect significantly the insurer's financial statements or its ability to be a going concern. In addition, the supervisors should also communicate to the statutory auditor on a timely basis facts that they become aware, that might be of importance to the auditor in the conduct of his audit and to which the auditor might not otherwise have access to or might not have knowledge of, e.g. non compliance with solvency capital requirements.</p> <p>In addition, after such dialogue has taken place, and unless the insurance undertaking did not attend the dealings, the competent authorities should consider notifying it of the conversation and inform it at least in broad terms of the content, possible conclusions, and followup actions.</p>	Disagreed, outside the scope of these Guidelines.
57.	EY	1.15	We believe that the Guidelines could include more detail or illustrations on the nature and	See response

			extent of information to be exchanged, as exemplified in paragraph " 2.4 Definitions" and " Appendix I" of EBA Consultation Paper EBA/CP/2015/17. This should include examples for information provided to the auditors by the authorities (e.g. best practice, interpretation of principles, new regulatory initiatives).	to comment 42.
58.	Insurance Europe	1.15	This paragraph is repeated in paragraph 1.23.	Noted.
59.	KPMG IFRG Limited 15 Canada Square London E 14 5	1.15	We suggest to clarify, that the supervisor cannot have any access to the statutory auditor's working papers. We believe that, in order to reinforce the objective to enhance audit quality, a requirement should be included, that competent authorities should promptly notify statutory auditors if they become aware of relevant matters, including knowledge about circumstances that indicate a material error in financial statements that have been or are to be issued or a material uncertainty related to events or conditions that may cast significant doubt on an insurer's ability to continue as a going concern.	See response to comment 56.
60.	German Chamber of Public Accountants (Wirtschaftsp	1.16	see 1.12	
61.	EY	1.17	To enhance open communication, we do not believe that written communication "should" be mandated in particular circumstances, as informal communication is likely to be more effective than a formal reporting process. Notwithstanding, it will be important to ensure that any written reporting adds to, and does not detract from, open and proactive dialogue between competent authorities and auditors and does not deliver responses that are subject to high levels of risk management. It will also be important to ensure there is clarity around the reporting requirements and, as noted previously, no conflicts with auditors' duties of confidentiality or legal requirements. The Guidelines should prescribe that formal documentation of the outcome of the communication between the auditor and the authorities must be approved and signed-off by both sides.	Disagreed, the Guideline provides for the appropriate use of communication tools and channels. Documentation of the dialogue and reporting to the supervised insurance undertaking is not necessarily

				expected.
62.	ICAEW	1.17	8. We believe that constructive, two-way communication between auditors and supervisors can help each party, by enriching their knowledge and risk assessment processes and sharing any concerns and encourage our profession and the regulators to regularly engage in sufficiently frequent and constructive dialogue, both in terms of formal meetings, and more informally should this be considered an effective way of communicating more general ideas about the current environment and concerns.	Agreed.
63.	Insurance Europe	1.17	Phone calls do not seem a correct mean of communication as there is no paper trail/audit trail of such communication making it easy to breach professional secrecy. It is indeed very difficult to prove if something was said during a phone call. Phone calls as a way of communicating should only be allowed if each call is recorded as part of the record authorities are requested safeguard cf. paragraph 1.18. In addition, we strongly disagree with the suggestion that Competent authorities should promote setting up regular physical meetings. This is not in line with article 12.2 of the Audit Regulation which only requires regular meetings in the case of global systemic companies and only on industry level, not for specific companies.	See response to comments 7 and 61.
64.	EIOPA Insurance and Reinsurance Stakeholder Group	1.18	1.18 requires the supervisor to keep a record of communication. This record should be subject to minutes shared and agreed with the statutory auditors.	Disagreed, the Guidelines address NCA, which should maintain a record.
65.	Federation of European Accountants	1.18	19. Paragraph 1.18 refers to the need for keeping a record of the communication. In our view, if the NCAs keep written minutes of the meetings and discussion, they should share those draft minutes with the participants involved for comments and approval. This practice should ensure a mutually accepted and adequate record of the exchange of information without increasing expectations on auditors and NCAs.	See response to comment 64.
66.	German Chamber of Public Accountants (Wirtschaftsp	1.18	We propose that competent authorities should share their records with the participants of a meeting for comments and approval. That could promote a mutually accepted dialogue.	See response to comment 64.
67.	ICAEW	1.18	9. When performing a financial statement audit in accordance with internationally accepted auditing standards, the external auditor should communicate with management and/or those charged with governance about significant matters relating to financial reporting or supplementary matters, and these communications may be accessed by the	Noted, the issue seems out of scope of these

			supervisor. In the same manner, in certain jurisdictions, the external auditor may also have access to the supervisor's communications to the insurer. Given the benefits that may ensue, when communicating with management and/or those charged with governance of the insurance undertaking, both the supervisor and the external auditor should consider communicating with the insurer in writing about matters that may also be of interest to each other. These written communications would then form part of the insurer's records to which the other party should have access to.	Guidelines.
68.	Insurance Europe	1.18	The prompt and direct report to the company of any dialogue between competent authorities and auditors must be a fundamental requirement	Noted, the issue seems out of scope of these Guidelines.
69.	KPMG IFRG Limited 15 Canada Square London E 14 5	1.18	The proposed guideline requires the supervisor to keep a record of communication. This record should be subject to minutes shared and agreed with the statutory auditors.	See response to comment 64.
70.	Insurance Europe	1.19	As the competent authorities will be one of the parties to the dialogue, it would bring more clarity if EIOPA could further specify who is exactly meant by "both parties" in this paragraph.	Agreed, the Guidelines set out requirements on a dialogue between auditors and supervisors, it has been clarified that these are the two parties to this dialogue.
71.	Federation of European Accountants	1.20	20. We agree with the principle that the NCAs should consider the appropriate number and role of participants in the dialogue with the auditors and we suggest that the same principle is applied to the auditors. For instance the key audit partner should be able to consider whether or not any other team members, including any auditor's experts need to be present in the meetings with the NCAs.	Agreed, this can be assumed. The Guidelines have been amended.

72.	ICAEW	1.20	10. We agree with the principle that that competent authorities should consider the appropriate number and role of the participants in the dialogue and recommend that the same principle is applied to auditors.	See response to comment 71.
73.	EIOPA Insurance and Reinsurance Stakeholder Group	1.21	1.21 asks the supervisor to consider other participants, such as experts. The same should be possible for the key audit partner: he should as well consider to bring other participants to the dialogue.	See response to comment 71.
74.	EY	1.21	We believe that Audit firms should also be able to suggest the involvement of such experts when they judge it necessary.	See response to comment 71.
75.	Federation of European Accountants	1.21	21. Please refer to our comment in paragraph 1.20 above.	
76.	German Chamber of Public Accountants (Wirtschaftsp	1.21	We welcome that competent authorities should weigh the number of the participants to safeguard confidentiality. We propose to use the term „key audit partner(s)“ instead of „key audit partner“ as that function can be performed by more than one person (cf. Article 2 No. 16 of the Audit Directive).	Agreed, has been amended.
77.	ICAEW	1.21	11. It is important that the participants in the communications are informed of issues discussed without undue delay. In our experience bilateral meetings between external auditors and competent authorities are the most helpful way of information sharing and they tend to be more open and constructive than trilateral (supervisor/auditor/insurance undertaking) ones. We also stress the importance of safeguarding succession of the communication to ensure that discussions can be continued seamlessly regardless of turnover of staff on both sides.	Agreed.
78.	Insurance Europe	1.21	In certain cases the auditors shall consider to invite experts. It remains unclear from which organisations the supervisory authority can invite those experts. For undertakings it is crucial to know, which organisations participate in the dialogue and hence receive information about the undertaking. Further it is left open how confidentiality shall be safeguarded in the case of experts participating in meetings. As the information exchange covers non-disclosed information it is very important to ensure confidentiality.	Partially agreed, of course, these should be representatives of one of the two parties respectively.
79.	KPMG IFRG	1.21	The guidelines should clarify, that the key audit partner as well should consider to bring	See response

	Limited 15 Canada Square London E 14 5		other participants to the dialogue.	to comment 72.
80.	EIOPA Insurance and Reinsurance Stakeholder Group	1.22	<p>1.22 highlights that competent authorities should assess whether in particular circumstances and considering the issues to be discussed, trilateral meetings with representatives from the undertaking, and in particular its audit committee, would be useful to achieve effective dialogue.</p> <p>It is important to emphasize that representatives from the insurance undertaking should be included into the conversation from the beginning on to achieve effective dialogue.</p> <p>It is important to ensure that when representatives of the undertakings are not invited to the meetings, some mechanisms should be established to report the issues discussed between supervisor and auditor, in order to consider the main issues that concern.</p> <p>We are not convinced that the public oversight body should be part of the bilateral meetings between the supervisor and the auditor of one particular insurer. Indeed, we believe that if the public oversight body of auditors is invited to such one to one meetings, it might impair the effectiveness of such meetings, for instance access to propriety information and confidentiality. In our opinion, if at all, the public oversight body of auditors is invited in the case the competent supervisory authorities of insurance undertakings meet the auditors collectively to discuss aggregated industry matters as described in GL 6.</p>	Disagreed, the legal basis for the Guidelines is Art. 12 (2) with regards to the dialogue between supervisor and statutory auditor. It seems out of scope to regulate the communication with the supervised undertaking.
81.	EY	1.22	<p>In the UK, the PRA requires at least one tri-lateral meeting per annum for "category 1" firms. We believe that this approach, which we fully support, fits with objective of the proposal for Guidelines.</p> <p>Proposal for Guidelines should, in our view, include a minimum requirement of one tri-lateral meeting per year when in-depth communication is applied, rather than leaving it to competent authorities to determine whether or not to organise trilateral meetings based on their assessment of "usefulness". We also think that the role of audit committees and the importance of engagement with audit committee chairs should be reflected in the draft Guidelines.</p> <p>We also think that the role of audit committees and the importance of engagement with audit committee chairs should be reflected in the draft Guidelines.</p>	Agreed, the Guidelines leave sufficient scope for NCA to find an appropriate solution.
82.	Federation of European	1.22	<p>22. We are not convinced that the public oversight body should be part of the bilateral meetings between the supervisor and the auditor of one particular insurance undertaking.</p>	Partially agreed, they

	Accountants		<p>Indeed, we believe that if the public oversight body of auditors is invited to such one to one meetings, it might impair the effectiveness of such meetings, for instance in relation to access to propriety information and confidentiality. In our opinion, if at all, the public oversight body of auditors could be invited in the case the competent supervisory authorities of insurance undertakings meet the auditors collectively to discuss aggregated industry matters as described in Guideline 6 of the CP.</p> <p>23. Furthermore we suggest that EIOPA considers that the head of the internal audit function is also attending the trilateral meetings, in addition to the representatives of the audit committee.</p>	are not a required participant. They have been added to Guideline 6. It seems out of scope to invite the internal audit function.
83.	German Chamber of Public Accountants (Wirtschaftsp)	1.22	We support the opportunity of trilateral meetings with representatives from the undertaking as the latter should remain the main source of information (cf. No. 1.9).	Noted.
84.	ICAEW	1.22	12. We believe that the participation of the public oversight body during the meetings of the supervisor and the auditors of individual insurance undertakings would compromise the effectiveness of such meetings. It may impair access to proprietary information and confidentiality. We therefore recommend that the public oversight body of auditors is only invited to meetings when the competent supervisory authority of insurance undertakings meet the auditors collectively to discuss issues that affect the industry as a whole.	See response to comment 82.
85.	Insurance Europe	1.22	<p>The guideline suggests that trilateral meetings including the undertaking will only take place in exceptional circumstances. In our view, trilateral meetings should not be limited to particular circumstances. Rather, undertakings should be involved from the beginning as is already customary practice in most if not all member states. It is also important to ensure that when representatives of the undertakings are not invited to the meetings, some mechanisms should be established to report to the undertaking the issues discussed between supervisor and auditor.</p> <p>In addition, the guidelines go too far in specifically identifying the undertaking's audit committee. Undertakings' governance structures may vary considerably across Europe. It should be sufficient for the guidelines to refer to 'the undertaking', without reference to its audit committee, and allow competent authorities in national jurisdictions to determine how trilateral engagement with the undertaking should take place.</p> <p>We also do suggest that the guidelines should not highlight the possibility of trilateral meetings involving competent authorities dealing with the supervision of financial markets or with the public oversight of auditors. The objectives of these other competent authorities</p>	See response to comment 80.

			are quite different, and their involvement may bring unnecessary complications into the process.	
86.	KPMG IFRG Limited 15 Canada Square London E 14 5	1.22	<p>We generally agree with the proposed participants and as insurance undertakings and their specific circumstances differ we prefer in general to leave it open as to which other participants may be required in which specific circumstances.</p> <p>However, in our view other participants can only participate if that would not result in any confidentiality breaches. In addition, any such other participants should be required to treat any information communicated during such meetings as confidential in a similar way as is established for the competent authority and the auditor in accordance with Articles 53-62 of Directive 2013/36/EU3.</p> <p>Furthermore, when deciding whether to invite third parties, we also believe that the effect of the presence of those other participants on the openness and effectiveness of the communication between the competent authority and the auditor should be taken into account. Also, as we recommend the inclusion of promoting high-quality audits as an additional objective in the covering letter, we are of the view that facilitation of the role of the supervisor and audit quality should both be taken into account in assessing whether the presence of other relevant authorities is appropriate.</p> <p>Considering the above and other factors, we believe that it would be more relevant to cite an authority responsible for the public oversight of auditors as an example of a possible attendee at a meeting between competent authorities and auditors collectively rather than – as is currently the case in the Paper – as an attendee at a meeting about the audit of an individual undertaking.</p>	Agreed, confidentiality aspect has been highlighted.
87.	Federation of European Accountants	Guideline 5	24. We would suggest that EIOPA explicitly states in the guidelines that the NCAs should inform the auditor before the completion of the audit and in any case when a significant matter has occurred or has been revealed that might affect significantly the insurance undertaking's financial statements or its ability to be a going concern. In addition, the NCAs should also communicate to the statutory auditor, on a timely basis, facts that they become aware of and might be of importance to the auditor in the conduct of the audit and to which the auditor might not otherwise have access or might not have knowledge of, e.g. non-compliance with solvency capital requirements.	See response to comment 56.
88.	German Chamber of Public Accountants (Wirtschaftsp	1.23	<p>We welcome that competent authorities should take into account the planning cycle of statutory audits with regard to the frequency and timing of the dialogue.</p> <p>The participation in the mutual dialogue (esp. bilateral meetings) causes additional efforts and costs on the part of statutory auditors (cf. Section 5, page 13 - 14, policy option 2.2, of the draft Guidelines). Hence it is important that frequency and timing of communication</p>	Agreed, a reference to that effect has been added.

			are actually appropriate. We therefore propose that competent authorities should consult auditors on the appropriateness of the chosen frequency and timing. For this purpose it would be helpful to mention legal consequences in case of disagreements between authorities and auditors.	
89.	ICAEW	1.23	13. We consider that the establishment of the appropriate frequency and timing of communications is the responsibility of both competent authorities and auditors and it requires regular monitoring to allow for sufficient adaptability.	Agreed.
90.	Insurance Europe	1.23	Based on art. 12.2 paragraph 2 of the audit regulation, we understand that "regular" in the Audit Regulation concerns global systemic risk companies only. Furthermore regular meetings should be held at industry level, not with individual auditors of individual companies. Consequently, 1.23 should be deleted.	Disagreed, the requirement to establish an effective dialogue does not relate to Art. 12 (2), subparagraph 2.
91.	Insurance Europe	1.24	We understand that the phrase "ad hoc dialogue" as used here is the reflection of the spirit of the audit regulation which is quite clear in that dialogue should take place when there is a specific reason. Therefore, "Ad hoc dialogue" should be understood within these boundaries. To enhance clarity, examples should be given for "important issues" that could necessitate ad hoc dialogue.	Partially agreed, it refers to non-regular meetings.
92.	EY	1.25	<p>As already expressed, we welcome the risk-based approach to be applied by competent authorities. We believe that the Guidelines should also provide a definition and some criteria for the assessment of highly risky undertakings or those with an expected high impact in case of a failure.</p> <p>However, for systemically important insurance undertakings, we believe it would be useful to have a dialogue between auditors and competent authorities at least twice a year (as a minimum) - rather than "at least on an annual basis- with one meeting at the start of the audit to share respective visions on the risks of the insurance undertakings and another meeting before the audit opinion is signed.</p> <p>We also believe that the Guidelines could include more detail on how the dialogue will operate effectively in relation to insurance undertakings that are of systemic importance in EU Member States.</p> <p>In addition, as the Guidelines would apply to all insurance undertakings in the EU, including</p>	See response to comment 42.

			smaller insurance undertakings, we wonder whether, in addition to the proposed proportionality principle for their application, there should be a size and/or systemic impact test to determine their scope.	
93.	German Chamber of Public Accountants (Wirtschaftsp)	1.25	As already mentioned in reference to No. 1.12., we support the proposed proportionate approach. However, we would like to point out that the draft Guidelines do not specify the meaning of proportionality in terms of its lower limits. They only mention the opposite direction in relation to global and other systemically important institutions.	See response to comment 42.
94.	Insurance Europe	1.25	Supervisory authorities shall consider meetings at least on annual basis for highly risky undertakings that have an expected high impact in case of a given failure. How these undertakings shall be identified is not mentioned. This creates uncertainty for undertakings. The firms should be informed promptly when they are considered to be highly risky.	See response to comment 42.
95.	EY	1.26	We strongly support collective meetings between competent authorities and auditors and agree that there should be at least one meeting per annum (before audit planning stage of the audit cycle) but ideally two. These meetings are important for discussing accounting, auditing or industry issues, including current or emerging trends, vulnerabilities and risks that should be of interest to both supervisors and auditors.	See response to comment 42.
96.	Federation of European Accountants	1.26	<p>25. Finally, we reiterate our support for establishing communication between the NCAs and the auditors collectively, to discuss matters that affect the industry as a whole, the supervisor's expectations for the forthcoming audit and the auditor's concerns regarding the effects of the developments in the regulatory and macroeconomic environment. To this end, the Federation of European Accountants, being the representative of more than 875.000 professional accountants in 37 countries (including the 28 EU Member States) and in particular the Federation's Insurance working party, which represents the auditors of insurance undertakings across Europe, could be a forum where the NCAs communicate with the auditors of insurance undertakings on a collective basis.</p> <p>26. In addition, we suggest that EIOPA considers the publication of joint positions of NCAs and auditors to give more prominence to the emerging issues discussed and agreed during those meetings.</p>	Noted, proposal seems to be out of the scope of the Guidelines.
97.	German Chamber of Public Accountants (Wirtschaftsp)	1.26	The draft Guidelines do not specify who auditors collectively may be. According to No. 49 of the EBA draft Guidelines of October 21, 2015, they may also be professional bodies representing the auditors. Starting June 17, 2016 the so called „Abschlussprüferaufsichtsstelle (APAS)“ (public oversight on the profession) will supervise German statutory auditors of insurance/reinsurance undertakings according to the Audit Regulation. As a result, the German competent authorities can communicate with the APAS with regard to audit-related issues. That communication is only reasonable in terms of general issues such as the external environment and profile of an insurance/reinsurance	Agreed, supervisors should take into account the specific circumstances and the objective of

			<p>undertaking. Due to the professional duty of confidentiality of the auditors the APAS will not receive extensive information relating to every single audit. In cases where the APAS obtains confidential information (e. g. during disciplinary proceedings or inspections) it is itself subject to confidentiality (§ 66b of the revised German Public Accountant Act).</p> <p>With regard to general issues referring to statutory auditors the communication can be performed between the competent authorities and the Wirtschaftsprüferkammer as the latter upholds the interests of all of its members (§ 57 Abs. 1 of the revised German Public Accountant Act). The Wirtschaftsprüferkammer is also subject to confidentiality when it obtains confidential information (§ 64 of the revised German Public Accountant Act).</p>	the meeting before deciding whom to invite (as stated in Guideline 1.22)
98.	ICAEW	1.26	<p>14. ICAEW is highly supportive of effective auditor supervisor dialogue, and played a large role in developing the model used in the UK. We would encourage EIOPA to emphasise the importance of the two-way dialogue within the guidelines. We feel that the ability and onus on both sides to share information about both entities and the industry will facilitate a greater and freer flow of information. This will allow both auditors and supervisors to make more informed risk assessments, which would have a positive impact on the quality of both audit and regulation.</p>	Agreed.
99.	Insurance Europe	1.26	<p>We believe this to be outside of scope for dialogue. The Audit regulation does not mandate competent authorities to this kind of regular meetings other than for global systemic risk companies.</p>	See response to comment 90.
100.	German Chamber of Public Accountants (Wirtschaftsp	1.27	<p>We highly support that no undertaking-specific information is to be shared during the dialogue with auditors collectively. That ensures confidentiality and protects the client's (and the public's) trust in the accounting profession.</p>	Agreed.
101.	Insurance Europe	Final provision on reviews	<p>Like in paragraph 1.6 it would have been very beneficial to have the application date as well as any possible review date set out in the document.</p>	Agreed.
102.	German Chamber of Public Accountants (Wirtschaftsp	Section 3. Objective pursued	<p>We support the objective to strengthen the market role of the audit profession with the overarching objective to contribute to the efficient functioning of financial and non-financial markets. This implies that the dialogue (Article 12 Para. 2 of the Audit Regulation) implicates mutual benefits which means that competent authorities should also share information with auditors and actually involve them in their decision on which information is to be disclosed in strict accordance with the principle of proportionality (cf. No. 1.12, 1.13).</p>	Agreed.

103	ICAEW	Section 3. Objective pursued	<p>15. Considering the baseline scenario and the options described in the impact assessment we believe that proportional application of all the requirements with additional obligations achieves the objectives of the guidelines. Competent authorities and auditors should determine together the appropriate frequency of communication, but it should allow at least one annual bilateral meeting. At least one annual meeting between supervisors and auditors collectively would provide an appropriate balance of costs and benefits.</p>	Agreed.
104	EIOPA Insurance and Reinsurance Stakeholder Group	Section 5. Analysis of impacts	<p>The consultation paper refers to an estimation of the cost for the auditor of € 5.400 per bilateral meeting. This relates exclusively to meeting costs. It is not clear. Further costs will result from further communication and reporting. Direct compliance costs may therefore be much higher and in a broad range. A broader impact assistant may help to manage both auditors' and insurers' expectations.</p> <p>It is assumed that the costs of the auditors for these meetings will be passed on to the undertakings. This aspect should not be automatically assumed, and this should be established explicitly in the guidelines.</p>	<p>Disagreed, the cost figure stems from COM's impact assessment. The Guidelines do not aim to extend the legal requirement of Art. 12 (2) of the Audit Regulation. As the dialogue shall be based on the regular statutory audit, there does not seem to be an obvious reason why any further significant costs to prepare for the dialogue should be incurred by</p>

				the statutory auditor.
105	Federation of European Accountants	Section 5. Analysis of impacts	27. Regarding the incremental costs arising from the formal communication between the NCAs and the auditor, we would like to mention that, apart from costs relating directly to the meeting, additional costs may occur from further communication and reporting. Compliance costs may therefore be higher than the mentioned € 5.400 and be in a broader range.	See response to comment 104.
106	KPMG IFRG Limited 15 Canada Square London E 14 5	Section 5. Analysis of impacts	<p>We acknowledge that it is difficult to quantify the additional costs and the benefits for the different stakeholders of implementing the proposed guidelines. The consultation paper contains an estimation of the costs for the audit firm per bilateral meeting of €5,400.</p> <p>In theory, application of the guidelines should not result in the performance of additional audit fieldwork. Therefore, we agree that additional costs for the auditor in theory relate to direct compliance costs – e.g. time spent on the preparation and review of written communications and the preparation and planning for meetings, time spent in and travelling to meetings, and the tracking and follow up of communications.</p> <p>It is unclear how the costs for a bilateral meeting are calculated and how many meetings EIOPA expects to be necessary to communicate effectively in accordance with the guidelines. We also note that the estimate of €5,400 exclusively relates to meeting costs. Based on our experience with in-depth communication and depending on the intensity of the communication and the reporting, the total costs may be many times more than this.</p> <p>Based on the above, we suggest EIOPA includes in its impact assessment all direct compliance costs and formulate a more realistic range for the estimate of the average direct compliance costs. We believe that this will help manage both auditors’ and insurers’ expectations.</p>	See response to comment 104.
107	EY	Section 6: Comparison of options	<p>We concur with the overall conclusions but suggest to develop and include in the Guidelines :</p> <p>criteria and methodology to identify high risk cases,</p> <p>more detail on how the dialogue will operate effectively in relation to insurance undertakings that are of systemic importance in EU Member States,</p> <p>necessity to hold two bilateral and one tri-lateral meetings for those cases.</p>	See response to comment 42.
108	EIOPA Insurance and Reinsurance Stakeholder Group	Section 7: Monitoring and evaluation	In order to facilitate monitoring and evaluation, EIOPA may require competent authorities to review the effectiveness of their communications with auditors on a periodic basis (e.g. by surveying the views of individual supervisors and auditors, analysis of examples of good or poor practice).	Agreed, this is a requirement based on

				Guideline 1.11.
109	EY	Section 7: Monitoring and evaluation	We would suggest that, in addition to competent authorities gathering feedback on the quality of the auditor-supervisor dialogue, the EIOPA carries out a formal, post implementation review, of the Guidelines to ensure they are operating effectively and consistently across the EU.	Agreed.
110	Federation of European Accountants	Section 7: Monitoring and evaluation	28. We explicitly express our support for this section in the CP;; we believe that EIOPA should consider establishing processes to assess the effectiveness of the communication between supervisors and auditors, which may help to evaluate whether or not a review of the final text is necessary in the future.	Agreed.
111	KPMG IFRG Limited 15 Canada Square London E 14 5	Section 7: Monitoring and evaluation	In order to facilitate monitoring and evaluation, EIOPA may require competent authorities to review the effectiveness of their communications with auditors on a periodic basis (e.g. by surveying the views of individual supervisors and auditors, analysis of examples of good or poor practice).	See response to comment 108.