

Comments on Consultation 33-09 Draft Advice on Governance

Name company: AMICE

Please insert your comments in the table below, and send it to secretariat@ceiops.eu in word format. In order to facilitate processing of your comments, we would appreciate if you could refer to the relevant section and/or paragraph in the Consultation Paper 33-09.

Reference	Comment
General comment	Our response to CP 33 should be read in relation to our response to the " CEIOPS Issues Paper on Implementing Measures on System of Governance " that CEIOPS published in November 2008.
General comment	<p>Developing an appropriate system of governance as required by the Framework Directive and including the four "key functions" of risk management, compliance, internal audit and actuarial function, is seen by AMICE's members as probably the most demanding and most burdensome requirement arriving through Solvency II. This leads us to forcefully make two points as a general introduction to our comments:</p> <p>The application of the proportionality principle is of particular importance in the context of regulation of governance aspects. The new recital 14a (in the numbering of the EP text of 16.4.2009 – Amendment 145) as well as the newly inserted Art 28 (3a) put emphasis on the importance of size as such as a determinant of proportionality – in addition to the three dimensions of nature, scale and complexity of risk. Art 28 (3a) expressly refers to proportionality in implementing measures while the last part of Rec 14a equally expressly refers to the application of proportionality in "the exercise of supervisory powers". CEIOPS' general commitment in par. 1.6 to "address the principle, where appropriate" is for us too weak to allay our members' fears about being unduly overburdened with structural and procedural governance requirements.</p> <p>The implementation of governance requirements, both structural and procedural, takes time and cannot be done within a few months. It will include training of employees entrusted with and responsible for key functions and may include the hiring of staff with particular competences and/or the identification and hiring of appropriate service providers to whom functions may be outsourced. As we have already commented on other occasions, our members feel that the 12 months foreseen between</p>

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	the finalisation of the level 2 measures in autumn 2011 and the implementation of the Solv II framework in autumn 2012 will be very, very tight. We urge CEIOPS to make reference to these expected bottlenecks when submitting its advice to the European Commission and to phrase its advice accordingly.
General comment	The possibility to outsource functions is for us a focal element of the principle of proportionality. Many of our members are therefore particularly alerted by any suggestions from CEIOPS to curb or reduce the possibilities for outsourcing. We are therefore making related comments, among others, in the context of the outsourcing of the internal audit function and with regard to the retention of competences and/or responsibilities at the outsourcing undertaking.
General comment	We agree that the system of governance should be transparent to the supervisor. This transparency, however, must not lead to a confusion of the roles and responsibilities of the company on one hand and the supervisor on the other. We reject undue interference by the supervisor in the definition of the general policy or the business policy of the company or in the policy as such of recruiting staff for the individuals to whom Art 42 applies.
General comment	<p>We would like to make the general point that strong governance in an enterprise must rely also strongly on the motivation, involvement and ethics of the individuals involved. For mutual insurers, this is complemented by an intrinsic focus on the long-term development of the company for the benefit of its member-policyholders. A multitude of strategies, policies, rules and controls alone can and will not suffice.</p> <p>Similarly, a system for effective risk management must also rely heavily on education and training, in addition to certain procedures and controls whose obedience should never stand in the way of a holistic risk assessment (“missing the wood for the trees”).</p>
General comment	For groups, we support a system of governance that is to the extent possible unique and common to all the legal entities within the group. We believe it could be counterproductive to duplicate the four key functions (risk management, compliance, internal audit, actuarial) in each legal entity of the group.
Article 41	General Governance Requirements

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Para 3.12	In line with our general comment above, we reiterate that in the final version of the Framework Directive the obligation to observe the principle of proportionality goes beyond the initial concept of nature, scale, and complexity of risk. Both CEIOPS and the Commission are of course aware of this; it should however also be clearly spelt out in CEIOPS' advice.
Para 3.15	<p>Many of our members see value in concept described in footnote 2 of CEIOPS' consultation paper as a singular minority position.</p> <p>We are of course aware of the instruction of Art. 46(3) but believe that the required "independence from the operational functions" can in certain circumstances be achieved to an appropriate (and proportionate) degree by a construction as proposed in this footnote. Likewise, we are aware of the considerations expressed in para 3.237.</p> <p>Nevertheless, we encourage CEIOPS to further pursue this idea and to include related passages in its advice.</p>
Para 3.22and23, 3.27and28	<p>We agree that crisis management planning and contingency planning minimise the loss in the event of an event that is significant due to its nature and/or severity. Such planning allows the organisation to provide an adequate response and to ensure the continuity of the operations.</p> <p>We appreciate the relatively general obligations that CEIOPS proposes in this context (identifying the risk, testing and updating, communicating) and warn against prescribing the contents of such plans in any greater detail. When assessing the plans, supervisors should apply proportionality in line with the principle that proportionality relates also to "the exercise of supervisory powers".</p>
Article 42	Fit and Proper Requirements
Para 3.30	<p>In our general comments, we have already laid out that we believe that the "fit and proper" requirement as circumscribed in Art. 42(1), namely having adequate knowledge, qualifications, and experience, and being of good repute and integrity, do not suffice alone to make managers and holders of key functions good post holders – as numerous examples have shown over the past years, notably in the banking and investment banking sectors.</p> <p>We also would like to mention already here that it is necessary to see the fitness and propriety of a management body in a</p>

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	collective way.
Para 3.32	We fully support CEIOPS in these findings. Undertakings themselves are indeed in the better position to identify the key functions in their organisation.
3.31 and 32 and 3.43	<p>When CEIOPS states that the circle of persons that hold key functions may go beyond those that “effectively run the undertaking” and the persons responsible for the (four) key functions referred to in Art 43, 45, 46, 47, we feel that CEIOPS may come very close to – or even transgress – the boundaries of the scope of Art 49(1)(b) of the Framework Directive. In other words, we do not agree with the free-handed extension of the fit and proper requirements to middle management “taking into account the nature, scale, and complexity inherent in the business of the undertaking.”</p> <p>First of all, having to ascertain of fitness and propriety in the meaning of the Solvency II framework and following up with the monitoring of these qualities for a large number of staff can out to be extremely burdensome. This, for us, is a case of “upwards proportionality” (i.e. higher requirements for larger undertakings that go <u>beyond</u> the standard requirements of the framework directive text) against which we have spoken out in other contexts.</p> <p>Apart from the consideration of a potential case of “ultra virus”, we are alerted by the completely open-ended phrasing of this suggestion and see no indication where the limits could be to declaring wide circles of an insurer’s personnel as “key”.</p>
Para 3.34, 3.35 and 3.43	<p>We welcome the clear reference in para. 3.34 and 3.43 to nature, scale and complexity of the business.</p> <p>Furthermore, we emphasise again the importance of observing the contribution of each member of the administrative or management body to the <u>collective</u> functioning of the body and to the sound and prudent management of the undertaking.</p> <p>As we had the opportunity to discuss with CEIOPS on several occasions and as CEIOPS is aware, some mutual insurers may be particularly challenged in this aspect due to their specific statutes and/or governance rules. Many mutuals are in their activities restricted to insuring certain groups of individuals (e.g. members of a particular profession). In turn, they are then obliged to compose their board partially or completely from among membership. Undoubtedly (for us), the inclusion in the board of a mutual insurer of member-policyholder (i.e. clients) add considerably to the overall functioning of this body as it injects the clients’ angle to the deliberations of the board which, for mutuals, is at the core of their business model. Applying stringent qualification and knowledge tests to every single member of such a board jeopardises this concept.</p>

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	<p>The same, as we have argued earlier, is by the way true for all cases where supervisory boards of insurers have, by virtue of law, to include employees' representatives.</p> <p>We would like to mention that we agree with CEIOPS that all members of the administrative or management bodies should fulfil the "propriety" requirement.</p>
Para 3.41	<p>We note that the obligation to notify separately and specifically when a person referred to in Art. 42 has been replaced due to loss of "fit and proper" status is one in the Framework directive. We do not see an urgent reason for CEIOPS to harmonise the particulars of the notification <u>process</u>.</p> <p>We believe, however, that the obligation on the insurer to notify the particular <u>circumstances</u> of the person's departure has to be designed in a restrictive way. We are thinking of the situation that an employee is involved in a case before the courts which, at the end, clears this employee from any allegations. Pre-emptive classification of this employee as, for example, "not proper" may be absolutely inappropriate and moreover in breach of national labour and/or libel laws.</p>
Para 3.44	<p>We agree that undertakings should have to inform the supervisor of the persons who effectively run the company. It is however important that this remains a notification obligation and does not become an obligation to wait until the supervisor approves the appointment through an explicit act.</p>
Article 43	Risk Management System
Para 3.46	<p>In line with our general emphasis on proportionality, we welcome the clear reference in this paragraph.</p>
Para 3.47	<p>AMICE members seek some more clarity about the relation between the responsibilities of the person responsible for the risk control function and the top manager, e.g. the CEO. On the one hand, they observe that the amount and scope of responsibilities incumbent on the risk management function are quite wide, which raises the question which functions in the area of strategy would remain with the CEO.</p> <p>On the other hand, members are concerned that in small or medium size enterprises it might be only the CEO who has the competence (skills, knowledge, experience) to exercise this function. Clarity whether this would be acceptable as a structure</p>

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	<p>would be welcome.</p> <p>We do not believe that extensive new advice is needed, but would regard the inclusion of some further explanations in the explanatory notes of the advice as useful guidance as to the thinking of CEIOPS and its members.</p>
Para 3.51 (f) and 3.53(f)	<p>CEIOPS writes that an “effective risk management system” requires a suitable own risk and solvency assessment process. AMICE agrees that ORSA is, along other elements, at the core of Pillar II requirements and is a key element to foster a risk management culture within the undertaking, but care is needed to avoid obliging companies in an excessive way. We make this point both with a view to avoiding quantitative overburdening as well as regarding confidentiality. Supervisors should not have the opportunity to interfere with the management of the undertaking, e.g. when having to scrutinise the risk management strategy including its objectives, key principles and the setting of its risk tolerance or “risk appetite” etc</p>
Para 3.53 (b)	<p>We are aware that the level 1 text (Art 43(1)) speaks of identifying, measuring, monitoring, managing, and reporting risks <u>on an individual and an aggregated level</u>. CEIOPS obviously refers to this principle when requesting a definition and categorisation of risks and the setting of risk limits <u>for each risk type</u>.</p> <p>We suggest clarifying in the explanatory text whether this principle has to be applied strictly when risks (risk drivers) carry along some minor or immaterial “ancillary” risks.</p>
Para 3.53 (e)	<p>AMICE members note that there is the permanent latent ambiguity about the terminology of the various bodies in a company, according to the divergent company structures in different jurisdictions. We urge CEIOPS to make a particular effort to avoid such ambiguities in their advice on level 2 measures.</p>
Para 3.57	<p>We note that CEIOPS specifies that the risk management system of the undertaking should cover all risks beyond those included in the SCR that may be considered <u>materially relevant</u>.</p> <p>We welcome this (the explicit reference to materiality), but would suggest some indication in the explanatory text about the concept of materiality in this context.</p>
Para 3.82, 3.83, 3.84 and 3.85	<p>CEIOPS states that the undertaking shall develop written ALM policies that especially take into account the interrelation with other types of risks, such as liquidity and underwriting risks.</p>

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	<p>We understand the concerns of CEIOPS with regard to liquidity and underwriting risks, and to the risks resulting from embedded options. They are certainly topical in the context of the current banking crisis. However, we do not believe that a text of such prescriptive detail would be well-placed in a level 2 implementation measure and suggest therefore to CEIOPS to revise its advice to the Commission.</p>
Para 3.117 and 3.120	<p>We believe that the suggestions by CEIOPS for a detailed liquidity contingency plan are very detailed, hence burdensome, and lack moreover any reference to proportionality, in particular with regard to item (c), review and testing.</p>
Para 3.136 and 3.145	<p>(I) We understand CEIOPS' text as a reference to the "incident data base" and the process of collecting and processing incidents incurred or narrowly avoided. We agree that incident data bases can be a good tool for improving the control of operational risk. It enables the insurer to track problems while highlighting the seriousness of incidents and their implications and points to possible or necessary improvements.</p> <p>We would appreciate to know (although not necessarily in the context of this advice) whether CEIOPS considers any other use of such an incident data base in the Solvency II context, for example in connection with the ORSA.</p> <p>(II) It seems difficult, if not impossible in practice to assess <u>all interrelationships</u> between <u>all risks</u> that have occurred or have been narrowly avoided. This would require an immense amount of data and be absolutely unaffordable, probably not only for small and medium size insurers. As an alternative, we believe that communication among the managers concerned would not only be sufficient, but at the end also more effective to assess such interrelationships.</p>
Para 3.140	<p>CEIOPS' paper defines operational risk as the risk of loss arising from inadequate or failed internal processes, or from personnel and systems and external events. To assess this risk, CEIOPS expects the undertaking to identify its exposure to high severity events and to assess "its vulnerability" to these risks through stress and scenario testing. We wonder whether this implies that the operational risk should be quantified again, in addition to Pillar1 calculations. If this is the case, we believe that the different scenarios should be set up by the undertaking in collaboration with the supervisor. An open dialogue with the supervisor is key in this field.</p>
Para. 3.166	<p>Derivatives are not the only possibility to hedge against credit risk. We suggest the phrasing "... hedging credit risk, e.g. via derivatives ...".</p>

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Para 3.179 and 3.190	<p>In line with our general request for flexibility, AMICE members regard it crucial to allow this function to be arranged in a <u>centralised way within a group</u>. We understand CEIOPS' draft advice to provide for this possibility, but would appreciate a specific reference. This would allow insurers to start early enough to align their structures, where necessary, in time.</p> <p>Moreover, we are not certain how CEIOPS envisages the "independence" of the risk management function from operational business in the case of an insurer that decides to place the responsibility for risk management in house, but with the CEO. Would this be excluded because a CEO is by definition at the same time at the head of the operational function? We ask CEIOPS to be more specific or to explain its concept in this regard when finalising its advice to the Commission.</p>
Article 45	Internal Control
Para 3.196	<p>(I) AMICE's members agree that an effective internal control system should aim to secure effectiveness and efficiency of the undertaking's operations. However, we believe that diligence is required when uniformly defining "effectiveness" and "efficiency". Many mutual insurers pursue qualitative objectives in addition to and/or (partially) replacing quantitative ones found in public-limited type undertakings (e.g. increasing shareholder value).</p> <p>(II) We note that Art 45 of the Framework Directive requires that the compliance functions shall include advising on compliance with <u>laws, regulations, and administrative provisions adopted pursuant to the Solvency II framework directive</u>. We note, in contrast, that CEIOPS writes about the internal control system that it should secure at least compliance with <u>the (= all) applicable laws, regulations and administrative provisions</u>.</p> <p>If there is – as we seem to note – a contradiction, we ask CEIOPS to clarify it.</p>
Para 3.217	<p>The start of this paragraph with "In order to assess ..." deems us too demanding and perhaps unrealistic. We suggest a change to "In order to be in a position to assess ...".</p> <p>The reference in this paragraph to "statutes" is probably meant to refer to laws (and not to "statutes" of the insurer). We suggest simplifying and clarifying by writing "... should monitor any projects to change existing or to introduce new legislation and/or regulation." This would then include legislation/regulation at sub-national, national, European, and global level.</p>

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Para 3.222 and 3.227	We regard the explicit request to establish a “compliance plan” as overshooting the target and would regard this obligation as a natural part of having “a suitable control environment, appropriate control activities, ... and adequate monitoring mechanisms (as referred to in 3.225)”.
Article 46	Internal Audit
Para 3.231	<p>This paragraph states that the internal audit function needs to be independent from the organisational activities audited. The principle of independence means that the internal audit function operates under the direct control of the administrative or management body. This means that independence is preserved.</p> <p>AMICE welcomes such independence that clearly delineates the role of the internal audit (and we do not necessarily see a complete contradiction with what we wrote in our comment on para. 3.15).</p> <p>Members consider that any individual member of management should not have the possibility to suppress an audit of activities under his responsibility.</p>
Para 3.237	<p>We detect in this paragraph a tendency by CEIOPS to regard is <u>as an exception</u> that the internal audit function can indeed be outsourced (para 3.15 seems to be phrased in a more neutral way). This would seem to us a severe case of ignoring the principle of proportionality. For the case that our interpretation of CEIOPS’ thinking is correct and our fears therefore are justified, we raise serious objections to this view.</p> <p>We suggest changing this sentence as follows: “The internal audit function does not require a full time staff member but this depends on the scale, nature and complexity of the business. It can also be entrusted to a qualified party.”</p>
Para 3.238 and 3.247	<p>Expecting from every insurer an audit plan spanning (potentially) several years, is in our view not appropriate and does not adequately reflect the proportionality principle. We feel that the process of identifying, assessing, mitigating, managing, monitoring and reporting the operational risks (as referred to in par 3.134) can already be seen as a kind of audit plan.</p> <p>A request to establish an audit plan spanning (potentially) several years is a particularly striking example of why a preparation period of 12 months between the finalisation of level 2 measures and the entry into force of the Solvency II framework is</p>

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	extremely short and probably not sufficient.
Para 3.247	This paragraph states that every activity and every unit of the undertaking shall fall within the scope of the internal audit function. We believe that materiality is an inherent principle of all auditing activity.
Article 47	Actuarial Function
Para 3.253	With regards to the standards to be applied by the actuarial function in exercising its tasks, AMICE members consider the function should rely on technical standards that are widely accepted in the industry and the profession. We believe that Option 2 offers more flexibility than the other options and that it would be difficult to reach an agreement at European Level.
Para 3.262	With regards to the mandatory tasks of the actuarial function, we agree that the general scope of the tasks should be left to the undertaking to decide on its scope. Therefore we favour Option 1 .
Para 3.283 and 3.287	We agree with CEIOPS that defining the structure and content of the report on level 2 would be excessive and therefore support Option 2 .
Article 48	Outsourcing
Para 3.318	We think that CEIOPS' proposed advice that outsourcing undertaking have to "maintain in-house ... competence and ability to assess ..." goes somewhat beyond the instruction on level 1 that <u>responsibility</u> for the fulfilment of the legal obligation remains in-house. We believe that this is counter to the aim of outsourcing (which we regard as one of the cornerstones of applied proportionality) and may not be feasible for some of our smaller members. We suggest a wording that reflects more closely the level 1 requirement and refers mainly to the responsibility that remains with the outsourcing undertaking.

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Para 3.320	<p>CEIOPS believes that functions such as the selling of insurance products or claims handling are key functions (or at least fundamental to carry out its core business) for outsourcing control purposes.</p> <p>More guidance is needed to understand which type of functions will require to fulfil the requirements set in the paper for and outsourced activity and which of them will be out of the scope of Solvency II.</p>
Para 3.322	<p>When choosing a service provider for a critical or important function, no conflicts of interest should occur. At the same time, we note in that outsourcing within the same group is possible. We believe that the same requirements of absence of conflicts of interest are applicable.</p> <p>In several contexts, CEIOPS proposes to oblige the outsourcing undertaking to “<u>ensure</u>” certain qualities and procedures on the side of the service provider. We believe that having to “ensure” this exceeds in many cases the possibilities of the outsourcing undertaking in its contractual relationship with the service provider. We strongly suggest reducing the obligation on the outsourcing undertaking to contractually obliging the service provider to provide information/disclosure (see also our comments on 3.329, below).</p>
Para 3.326	<p>The undertaking remains responsible for the sub-outsourcing contract; AMICE believes that disclosure is the right approach to ensure transparency.</p>
Para 3.329	<p>CEIOPS writes that the insurance undertaking shall <u>ensure</u> that the service provider discloses any material changes to its financial resources or its risk profile. AMICE believes that it is more appropriate for insurance undertakings to require service providers <u>contractually</u> to <u>inform them</u> of any material changes to their financial resources and/or risk profile.</p>
Para 3.330 and 3.331	<p>We welcome that CEIOPS considers that (some) requirements may be applied more flexibly in the case of internal outsourcing within a group and expect that CEIOPS relates in its thinking to the extended definition of an insurance group in Art 210 (1)(c)(ii) of the Framework Directive (mutual groups).</p> <p>We argue, in addition, that this flexibility should apply more broadly than CEIOPS proposes and therefore suggest deleting the reference to the necessity of a written contract.</p>