

## Comments on Consultation 33-09 Draft Advice on Governance

Name company: PricewaterhouseCoopers

Please insert your comments in the table below, and send it to [secretariat@ceiops.eu](mailto: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	<p>Overall we consider CP33 to be a very good document. It is logical and clear, and the requirements are in line with our expectations and mirror, in the most part, current best practice.</p> <p>Please note that, while we have mainly restricted our comments to the draft advice presented in CP33, we have occasionally commented on the explanatory text.</p>
Section 3.1 Para 3.19	<p>We note that para 3.19 is not part of the formal draft advice to the Commission, however, we believe that a requirement for prior approval by the administrative or management body to apply to any changes with regard to the content of the policies could be onerous and inefficient.. Prior approval should be based on a pre-determination (by the administrative or management body) of the materiality of any changes. Para 3.19 appears to be contradicted in some ways by the following para 3.20 which states "an annual review would be considered sufficient, unless the system or area concerned undergo significant change".</p>
Para 3.24a	<p>While not disagreeing with this paragraph, we note that indications on expectations in terms of 'effective cooperation' could be useful at Level 3, as well as guidance on supervisors' views on the meaning of 'at all relevant levels within the organisation'.</p>

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Para 3;24b	The meaning of 'consistent' could be further clarified as it could mean intrinsically consistent in and of itself (within the context of the organisation), or consistent with business strategy(ies).
Para 3.24c	To cater for situations where no directly applicable 'professional qualifications' exist, the wording of these paragraph could perhaps be changed to 'sufficient professional qualifications and/or knowledge and experience'.
Para 3.24f	Decision-making procedures are obviously necessary throughout an organisation. They need to be effective. It may be worth considering identifying which decision-making procedures are envisaged by this paragraph in Level 3 measures. We would suggest that these would, certainly, include all decision-making procedures relevant to the risk position. We believe also that there should be emphasis on ensuring that all the right parties are involved, as appropriate, in decision-making.
Para 3.24g	Experience has shown that the separation of 'functions', or responsibilities, has proved challenging for small and medium-sized financial institutions in other sectors faced with similar requirements. While acknowledging CEIOPS' comments in its Feedback Statement concerning functions, it would appear likely that additional guidance at Level 3 could be useful.
Para 3.24h	The reference to 'information systems' may be misleading: we assume it means systems which provide information which both use technology and those that do not, but this may need to be specified. Clearly, where risk relevant information relies on IT-based systems and processes, they must fulfil the requirements for information systems.
Para 3.24l	<p>We see a substantial ongoing challenge with regards the availability of sufficiently qualified personnel, particularly with regards to actuarial professionals in some countries.</p> <p>In terms of the four functions (risk management, compliance, actuarial and internal audit), organisations will need to establish appropriate organisation structures, with clear allocation of tasks and responsibilities for each of these functions. We suggest that the good practice '<i>three lines of defence</i>' concept could be used as the basis, whereby business and actuarial function form the first line of defence, risk management and compliance fall primarily into the second line of defence</p>

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	(oversight/advice), and internal audit in the third line of defence (ex-post review) – see also Para 3.26. As suggested in the Feedback Statement, this might be covered by Level 3 measures.
Para 3.25	Further guidance on the nature and management of conflicts of interest would be useful at Level 3.
Para 3.27	Further guidance on areas where contingency plans at a minimum need to be in place may be helpful at Level 3.
Section 3.2 Para 3. 42	Where ‘fit and proper’ requirements currently exist in different EU countries, the process varies. In some cases, the requirement is to notify the regulator of the appointment (and dismissal or resignation) of approved persons. The regulator may keep a register of these individuals. In other countries, prior regulator approval is required before an appointment is confirmed. We note that CEIOPS intends to provide further guidance on ‘fit and proper’ requirements at Level 3. We would recommend that consideration is given to adopting pre-approval of key appointments as the common approach.
Section 3.3 Para 3.53 (d)	The wording ‘ <i>continuous monitoring</i> ’ may need clarification. CEIOPS might consider using “on-going” or “regular” or “active” monitoring - terminology which it uses elsewhere - to avoid creating an overly onerous expectation. We infer from the Feedback Statement, amongst other things, that the determination would rest with the administrative body and management as to the nature and frequency of monitoring that would be appropriate in each circumstance, but that key is a that all risks are appropriately monitoring on an ongoing basis.
Para 3.67 – 3.69	Specific reference to back-testing for underwriting risk might lead to overly challenging compliance requirements in some cases, e.g. low frequency, high-severity business or start-ups (see also Para 3.140 on operational risk). Alternatives, such as consortium data and expert opinions might also be considered.
Para 3.67- 3.69	General requirements concerning incentive systems should be mentioned in the next advice.

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Para 3.108	The reference to an investment policy 'in line with what a competent, prudent and expert manager would apply' may require further clarification at Level 3. More clarification is also needed regarding consistency between investment policy, risk strategy and capital allocation/limitation.
Para. 3.110	In particular, requirements with regards to to the qualifications of the staff dealing with complex products should be included.
Para 3.113 (in addition to other references to quantitative limits, e.g., in paras 3.62c, 3.100, 3.107 and 3.125	Specific reference to the type of limits to be used might be relevant: nominal thresholds might prove insufficient compared to economic limits, e.g. in terms of VaR or sensitivities.
Section 3.3 Para 3.120	See comment above under para 3.53 with regards to ' <i>continuous monitoring</i> '.
Section 3.3 Para 3.160 (b)	The wording here may lead some to assume that management has to ensure that any ART arrangements include genuine risk transfer. Some ART arrangements may simply be struck to monetise future cash flows or to provide financing etc., which we assume CEIOPS does not intend to 'ban' when mentioning 'genuine risk transfer'
Para 3.163	Possibly, loss given default could also be included as a primary credit risk factor.
Para 3.169	For most undertakings, credit risk might also deserve a written policy.
Para 3.191	The advice should promote involvement of the risk management function in proposing and assessing mitigation solutions for different risks.

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Para 3.190	Explanation, if there are exceptions for small entities which go further than the general principle of proportionality.
Para 3.193	In terms of Article 45 of the Level 1 Directive, the distinction between the internal control system and the compliance function may not be totally clear. This distinction could be reinforced in Level 2.
Section 3.4 Para 3.213	See comment above under para 3.53 with regards to ' <i>continuous monitoring</i> '.
Para 3.218	The role of the compliance function is under considerable debate in other financial sectors <sup>1</sup> . One key concern currently is that the remit of the compliance function is so wide (and continuously widening) and that inadequate resources are available to ensure it can perform effectively. Within the limitations of the Level 1 text (which is contrary in some aspects to the way best practice in compliance functions is evolving in other financial sectors: for example, compliance functions in banks are not currently responsible for compliance with prudential requirements, except very occasionally in an advisory capacity). CEIOPS should strive to ensure that compliance function's remit is manageable, fully leveraging other expertise within the firm (such as legal department, human resources, etc.) as well as the other control functions. An expectation that the compliance function is responsible for overseeing compliance with all regulations to which the organisation is exposed (including, for example, employment law) may be impractical.
Para 3.221 (and 3.261)	Access rights to the relevant systems and staff members might be recommended for the risk management function, in addition to the internal audit, compliance and actuarial functions.
Para 3.224, 3.268	Explicit guidance on overall data governance and management might be consistent with the relevance of the issue, and not just for actuarial valuations, but for the wider internal control and risk management system.
Para 3.227	The Level 2 advice needs to reinforce the fact that it is management's responsibility to establish an appropriate compliance management/monitoring plan, covering all areas of compliance risk, with the compliance function's support and advice in those areas for which the compliance function is responsible (see comments above).

<sup>1</sup> PwC will shortly be issue its report on a study of compliance function effectiveness covering over 70 financial institutions in Continental Europe. A copy will be made available to CEIOPS once it is published.

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Para 3.232 (see also 3.6)	Compensation according to own objectives and not in relation to the performance of business units might be recommended for all the control functions, not just the internal audit function.
Section 3.6 Para 3.253 & 3.295	<p>There are two separate issues that need to be addressed:</p> <p>(1) consistency of technical standards between members of different professional actuarial bodies in different countries;</p> <p>(2) consistency of technical standards between actuaries who are members of professional bodies, and those who are qualified to carry out the activities of the actuarial function by means of being able to demonstrate sufficient knowledge of actuarial and financial mathematics but who are not themselves members of a recognised professional body.</p> <p>It is not efficient to attempt to achieve the above by means of setting up a body to debate and create European technical standards, but should be created at the equivalent to Level 3 advice. This standard setting process should operate at a high level of general principles, and should be "outcomes focussed", not drilling down to the level of methods and approaches.</p> <p>Our preference is for a version of option A.1 to be pursued ("The function should use technical standards developed by CEIOPS"). These standards should be constructed to operate at the highest possible level of generality, equivalent to Level 2 measures.</p>
Para 3.266; 3.289; , 3.290; 3.291	Level of integration between actuarial and risk management functions might be addressed further, in particular where internal model development and maintenance are concerned, since duplication and misalignments should be explicitly discouraged.
Section 3.6 Para 3.283	We agree with option 2 regarding leaving details up to undertakings as per 3.10.
Section 3.6 Para 3.301	The last sentence duplicates the first sentence in paragraph 3.307, so should be deleted.
Section 3.6 Para 3.304	We agree that the analysis of the sufficiency of premiums is the key area where actuaries should be able to express an opinion on underwriting policy and that this should be included in Level 2 guidance as a mandatory requirement for this opinion. Some

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(a)	clarification would be useful as to what timeframe of the business this refers to - 1 year's future new business.
Section 3.6 Para 3.306	This paragraph duplicates paragraph 3.300, so should be deleted.
Section 3.6 Para 3.308	In smaller specialist firms the actuarial function adds most value when it acts in collaboration with the Board and senior management. This also acts to embed technical issues more fully into the business.  To give greater clarity around this requirement we suggest the requirement on the actuarial function to express independent opinions in a number of areas does not mean that the actuarial function cannot have advised on the original decisions taken in these areas.
Section 3.7 Para 3.324 (g)	We agree with this paragraph but question how realistic it is – especially for a small organisation to impose such conditions on its outsourcing partners. It would be helpful if CEIOPS could clarify whether this requirement will apply to new arrangements only or is the expectation that existing arrangements will have to be re-negotiated?
Section 3.7 Para 3.333	The Due Diligence responsibility to ensure that the service provider has adequate risk management will be prohibitively high. A best efforts basis would be more reasonable. Please clarify whether this requirement is expected to apply to new arrangements only or to apply to existing ones as well (as above).