

**Stellungnahme zu Leitlinien über die Kommunikation  
zwischen Versicherungsaufsicht und Versicherungsprüfern  
im Rahmen der EU-Konsultation**

Die WPK hat mit Schreiben vom 28. April 2016 gegenüber der Europäischen Aufsichtsbehörde für das Versicherungswesen und die betriebliche Altersversorgung (EIOPA) im Rahmen der EU-Konsultation zu den Leitlinien über die Kommunikation zwischen Versicherungsaufsicht und Versicherungsprüfern wie nachfolgend wiedergegeben Stellung genommen.

**Comments Template 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**

**Deadline  
26 April 2016  
23:59 CET**

Name of Company:	German Chamber of Public Accountants (Wirtschaftsprüferkammer)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Confidential/ <i>Public</i>
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Do <b>not</b> change the numbering in the column "reference"; <b>if you change numbering, your comment cannot be processed by our IT tool</b></li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to CP16-002@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the paragraphs refers to Consultation Paper on the proposal for implementing technical standards on special purpose vehicles.</p>		
<b>Reference</b>	<b>Comment</b>	
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>	

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	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 (EU) No. 537/2014.	
Introduction		
1.1		
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>	
1.3		
1.4		
1.5		
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.	
Guideline 1		
1.7		
1.8	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.	

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	<p>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>	
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.	
1.10		
1.11		
Guidelines 2		

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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).
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1.13	See 1.14
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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 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</p>
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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.

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.

Referring to the areas in detail:

- 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.
- 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.
- 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).
- audit approach: The audit approach is part of the above mentioned audit report.

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	<ul style="list-style-type: none"> <li>• <u>communication with the administrative, management or supervisory body and the undertaking's audit committee</u>: 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.</li> <li>• <u>valuation and the appropriateness of own funds</u>: That information is provided in and should be limited to the detailed report and/or the annex of annual accounts.</li> <li>• <u>investments</u>: That information is given in and should be limited to the detailed report and/or the annex of annual accounts.</li> <li>• <u>financial statements and other audit documentation</u>: The meaning of that point is unclear. Financial statements should to be requested directly from the audited entity (cf. No. 1.9).</li> </ul>	
1.15		
Guideline 3		
1.16	see 1.12	
1.17		
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.	
Guideline 4		
1.19		
1.20		
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).	

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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).	
Guideline 5		
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 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.</p>	
1.24		
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.	
Guideline 6		
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	



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	<p>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 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>	
1.27	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.	
Compliance and reporting rules		
1.28		
1.29		
1.30		
1.31		
Final provision on reviews		
1.32		
Annex I : Impact		

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Assessment		
Section 1. Procedural issues and consultation of interested parties		
Section 2. Problem definition		
Section 3. Objective pursued	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).	
Section 4. Policy options		
Section 5. Analysis of impacts		
Section 6: Comparison of options		
Section 7: Monitoring and evaluation		