

The Solvency II System of Governance  
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Requirements, Sub-Systems, Functions,  
Procedures & Responsibilities

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# Introduction

- The main objective of insurance and reinsurance regulation and supervision is the *adequate protection of policyholders* and beneficiaries.
  - Recital 16 FD
- I firmly believe, that we should not abandon the main values of *market stability and policyholder protection* [...] and that we should not forget that the post-crisis regulatory agenda was put in place to restore citizens' confidence in the financial sector.
  - Gabriel Bernardino, Berlin (2018)

# Regulatory Regime

- Framework Directive 2009/138/EC (FD)
- Delegated Regulation (EU) 2015/35 (DA)
- EIOPA Guidelines
- EIOPA Explanatory Text on the System of Governance
- EIOPA Best Practice Rules
- Member States Law (e.g.: German Insurance Supervisory Code (ISC))
- NCA Guidelines (e.g.: BaFin Circular on Minimum Requirements on the System of Governance – MaGo)

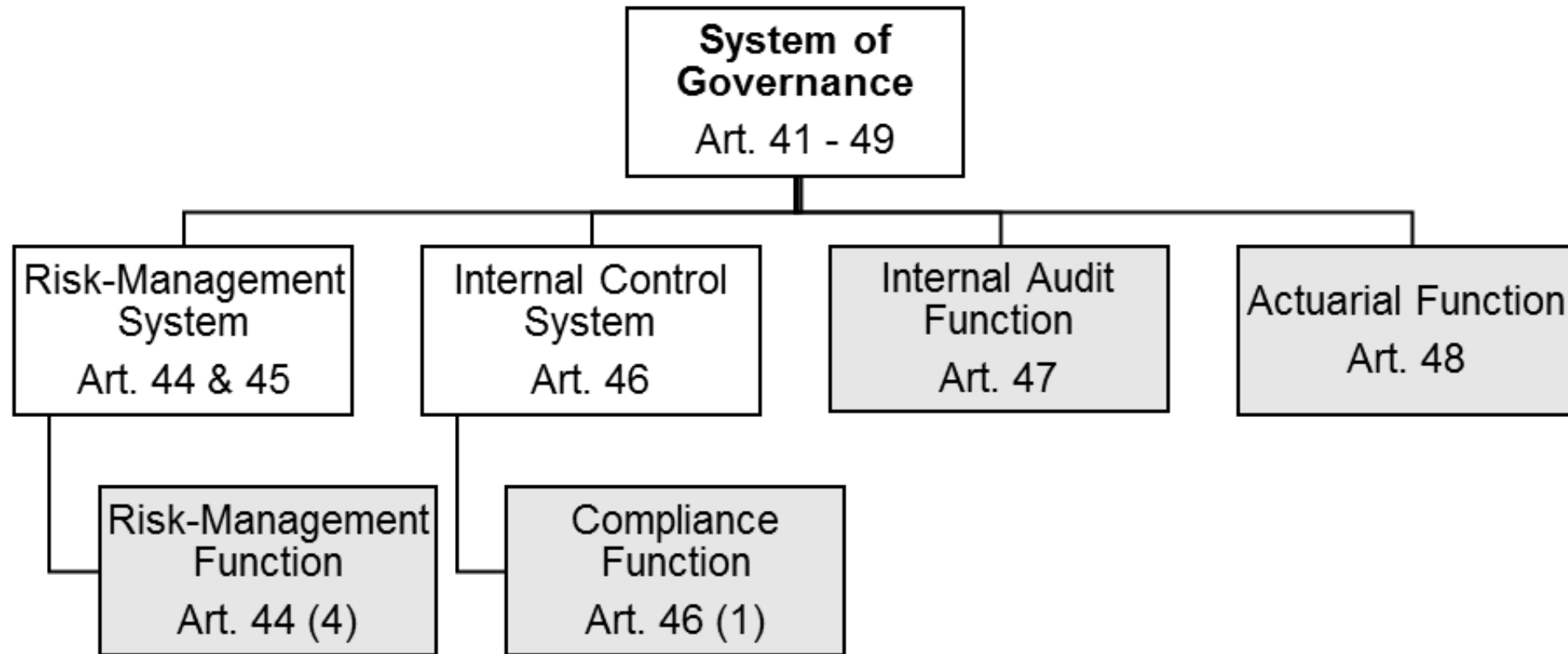
# General Governance Requirements

- Member States shall require all insurance ... undertakings to have in place an *effective* system of governance which provides for *sound and prudent management* of the business. That system shall at least include
  - an adequate *transparent organisational structure* with a *clear allocation and appropriate segregation of responsibilities* and
  - an *effective system* for ensuring the *transmission of information*.

# Conditions Governing Business

- Art. 40 FD [Responsibility of the administrative, management or supervisory body]
  - Member States shall ensure that the AMSB of the insurance ... undertaking has the ultimate responsibility for the compliance, by the undertaking concerned, with the laws, regulations and administrative provisions adopted pursuant to this directive.

# Conditions Governing Business



# Risk-Management System

- Insurance undertakings shall have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies (Art. 44 (1) FD).

# Internal Control System

- Insurance undertakings shall have in place an effective internal control system. The system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function (Art. 46 FD).
- The internal control system has to ensure
  - compliance with applicable laws, regulations and administrative provisions,
  - the effectiveness and the efficiency of the undertaking's operations in light of its objectives and
  - the availability and reliability of financial and non-financial information (Art. 266 DA).



# Internal Audit Function

- The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and of other elements of the system of governance (Art. 47 (1) FD). It shall be objective and independent from the operational functions (2).

# Actuarial Function

- Insurance undertakings shall provide for an effective actuarial function
  - to coordinate the calculation of technical provisions,
  - to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions,
  - to assess the sufficiency and quality of the data used in the calculation of technical provisions, etc. (Art. 48 (1) FD).

# The Segregation of Responsibilities

# Segregation of Responsibilities

- Art. 41 (1) FD
  - The system [of governance] shall at least include an adequate transparent organisational structure with *a clear allocation and appropriate segregation of responsibilities*.
- Art. 258 (1) g DA
  - Insurance undertakings shall ... ensure that the assignment of multiple tasks to ... organisational units does not or is not likely to prevent the persons concerned from carrying out any particular function in a *sound, honest and objective* manner;
- Art. 268 (1) 1 DA
  - [...] incorporate the functions ... into the organisational structure in a way which ensures that each function is free from influence that may compromise the function's ability to undertake its duties in an *objective, fair and independent* manner.
- Art. 41 (2) FD
  - The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance ... undertaking.

# Segregation of Responsibilities

- Does the call for *segregation of responsibilities* imply,
  - that no one may be AMSB-member and key function holder at the same time and/or
  - that no one may hold multiple key functions simultaneously?

# AMSB-Member & Key Function Holder?

- Art. 268 (1) DA
  - Each function shall operate under the ultimate responsibility of ... the AMSB.
- Art. 47 (2) FD
  - The internal audit function shall be objective and independent from the operational functions.
- EIOPA
  - [...] best practice for the NCA, to publicly disclose expectations *that control key functions should generally not be combined with operational functions, for example with the membership in the executive AMSB.*

# AMSB-Member & Key Function Holder?

- Section 24 (3) German ISA
  - [...] that the [a]ppointment as a member of the senior management does not preclude the exercise of a function
- BaFin/MaGo
  - [...] that a member of the management board can at the same time be the person internally responsible for a key function only *on a case-by-case basis*

# AMSB-Member & Key Function Holder?

- Partial Incompatibility rule (Art. 41 FD and Art. 258 (1) g, 268 (1) 1 DA)
  - No one is able to control his own performance in an objective, fair and independent manner!
  - EIOPA (2015)
    - An adequate segregation of responsibilities ensures that persons performing tasks are not simultaneously also responsible for monitoring and controlling the adequacy of this performance.



# AMSB-Member & Key Function Holder?

- Partial Incompatibility rule
  - Consequences for
    - the audit function
    - the actuarial function
    - the risk-management function
    - the compliance function
- Principle of Proportionality

# Segregation of Key Functions?

# Appropriate Standing of Key Functions

# Appropriate Standing of Key Functions?

- Partial Independence
  - Key functions have „to be operationally independent“ (van Hulle)
    - Limits for the right of instruction of the AMSB?
- Rank
  - Access
  - Adequate Resources

# Conclusions

Thank you very much for your attention!

