



EIOPA-BoS-12-032-rev1
21 December 2017

Decision of the Board of Supervisors

Rules of Procedure of the Mediation Panel

The Board of Supervisors,

Having regard to Article 41(4) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), (the "Regulation" and "EIOPA", respectively), according to which the Board of Supervisors of EIOPA shall adopt the Rules of procedure of the panel that shall be convoked to facilitate an impartial settlement of disagreements between competent authorities in cross-border situations (the "Panel") pursuant to Articles 19, 41(2) and 41(3) of the Regulation,

Having regard to Article 41(1) of the Regulation according to which the Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels,

Having regard to the Decision of the EEA Joint Committee No 200/2016 of 30 September 2016 amending Annex IX (Financial Services) to the EEA Agreement (2017/277)¹,

Whereas:

- (1) Article 8(1)(b) of the Regulation assigns EIOPA the task of mediating and settling disagreements between competent authorities.
- (2) Article 21(4) of the Regulation provides that EIOPA shall have a legally binding mediation role to resolve disputes between competent authorities within colleges of supervisors in accordance with the procedure set out in Article 19.
- (3) Article 31(c) of the Regulation provides that EIOPA shall promote a coordinated Union response, inter alia, by carrying out non-binding

¹ OJ L46, 23.02.2017, p. 13.

mediation upon a request from the competent authorities or on its own initiative.

- (4) Article 44(1), third and fourth subparagraphs, of the Regulation set forth the voting requirements with regard to decisions of the Board of Supervisors in accordance with Article 19(3) of the Regulation.
- (5) In cases where a disagreement involves a competent authority from an EEA EFTA State, the process of settlement has to take into account the role of the EFTA Surveillance Authority and the competent authorities of the EEA EFTA States, pursuant to the Decision of the EEA Joint Committee No 200/2016.

Has decided as follows:

CHAPTER 1 - General Provisions

Article 1 - Tasks of the Panel

- (1) These Rules of Procedure regulate the set-up and functioning of an independent panel which shall facilitate the impartial settlement of disagreements between competent authorities pursuant to Article 19 of the Regulation (the "Panel").
- (2) The Panel shall perform also a non-binding mediation function on disagreements among competent authorities, pursuant to Article 31(c) of the Regulation.

Article 2 - Composition and appointment of the Panel

- (1) The Panel shall consist of the Chairperson of EIOPA (the "Chairperson"), who shall chair the Panel, and two members of the Board of Supervisors. The latter may each be replaced by one of the four substitute members (the "substitute").
- (2) The members of the Panel and the four substitutes shall be appointed by the Board of Supervisors among its Voting Members and Permanent Representatives in accordance with the procedure set out in the Annex. The term of office of the members of the Panel shall be two years and their mandate may be renewed once. The term of office of the substitutes shall be two years and may be renewed. The mandate of the members of the Panel and the substitutes shall in any case expire when they cease to be members of the Board of Supervisors.
- (3) Terms shall be staggered. For this purpose, the initial term of office of one member of the Panel and of two of the substitutes shall be three years. If a member's or substitute's term lapses while a mediation procedure is under way his/her term shall where necessary be extended for the purpose of completing that procedure.

- (4) Should a member of the Panel or a substitute prematurely terminate his/her term of office, there shall be a new election in the meeting of the Board of Supervisors following the premature termination.
- (5) The member elected to replace the prematurely terminating member of the Panel or substitute shall serve for the remainder of the prematurely terminating member's term.
- (6) When the Chairperson convenes the Panel for the purposes of a particular disagreement, the Chairperson shall inform the Panel of the nature of the disagreement and of the identity of the parties. The members of the Panel shall inform the Chairperson of any impediments to their participation in the Panel for the purpose of settling the disagreement.
- (7) Pursuant to Article 41(2) of the Regulation the members of the Panel can neither be representatives of the competent authorities who are parties to the disagreement nor have either any interest in the conflict or direct links to the competent authorities concerned. For this purpose, if the Chairperson, on his/her own initiative or on the request of one of the parties to the disagreement, considers that a member is disqualified from participating, he/she shall appoint a substitute to replace that member. In the event that it is not possible to fully constitute a Panel from among its members and substitutes, the Chairperson shall ask the Board of Supervisors to fill any vacancy from among its members.
- (8) In particular, a panel member or substitute from a competent authority of the same Member State as a party to a disagreement is considered "having an interest in the conflict or direct links to the competent authorities concerned". In case of disagreement related to the functioning and activity of a supervisory college, members or substitutes from competent authorities which are part of the same college shall not be treated *per se* as having an interest in the conflict.
- (9) The Panel shall be assisted in its tasks by EIOPA staff who shall prepare the work of the Panel, with appropriate safeguards to prevent situations of conflict of interests.

Article 3 - Panel decision-making

Any decision by the Panel shall be adopted on the basis of the majority of its members. No abstention shall be allowed.

CHAPTER 2 - Binding mediation

Article 4 - The conciliation phase

- (1) The Panel may be asked to assist in the settlement of a disagreement pursuant to Article 19 of the Regulation, by one of the following persons filing with EIOPA the request set out in a template adopted by the Panel:
 - (i) a competent authority which is a party to the disagreement; or
 - (ii) the Chairperson for the request on the EIOPA's own initiative.

- (2) The Panel shall verify that the relevant legal requirements are met and decide whether to accept the request. It shall also set the period for conciliation subject to the requirements set out in the sectoral legislation. In deciding whether to accept the request, the Panel shall in particular refuse requests which it considers as unsubstantiated, abusive or outside the scope of Article 19 of the Regulation. The Panel shall inform the parties of its decision.
- (3) In case of a positive decision, the Panel shall act as a mediator and facilitate an agreement among the parties. For this purpose the Panel may require the parties to provide the relevant information and summon them to participate in meetings.
- (4) If the competent authorities concerned fail to reach an agreement within the conciliation phase, the Panel shall report back to the Board of Supervisors in accordance with Article 11 expressing its own remarks on the outcome of the procedure, and start the decision phase pursuant to Article 19(3) of the Regulation.

Article 5 - Decision phase

- (1) Upon the start of the decision phase pursuant to Article 19(3) of the Regulation, the Panel when necessary shall set for the parties:
 - (i) a deadline for the transmission to the Panel and the other parties of their allegations accompanied by the relevant documentation;
 - (ii) a subsequent deadline to reply to the allegations of the other parties.
- (2) The Panel may summon the parties and, when appropriate, other relevant experts, for their testimony.
- (3) Before proposing the decision to the Board of Supervisors, the Panel shall inform the parties of its intention to propose the decision, setting a time limit within which the parties may express their views on the matter. The time limit shall take full account of the urgency, complexity and potential consequences of the matter.
- (4) The Panel shall decide whether to propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third and fourth subparagraphs of Article 44(1) of the Regulation. Any dissenting view by a member of the Panel shall be reported to the Board of Supervisors with the decision. If no decision is proposed the Panel shall report back to the Board of Supervisors in accordance with Article 11 expressing its own remarks on the outcome of the procedure.
- (5) Any proposed decision shall:
 - (i) state the identity of the addressees;
 - (ii) state the reasons on which it is based;

- (iii) require a party or parties to take specific action or to refrain from action in order to settle the matter; inform the addressees of the legal remedies available under the Regulation;
 - (iv) set a deadline within which the addressees shall comply with it and report on compliance to EIOPA;
 - (v) set out the views expressed by the parties on the proposed decision; and
 - (vi) state whether the decision should be made public in accordance with Article 39 of the Regulation.
- (6) The Board of Supervisors shall adopt a final decision pursuant to Article 19(3) of the Regulation and decide on its publication in accordance with Article 39(5) of the Regulation.
- (7) Where the Board of Supervisors has addressed a decision under Article 19(3) of the Regulation to a party and the Panel considers that the party is not complying with that decision, and thereby is failing to ensure that a financial institution complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2) of the Regulation, the Panel where appropriate shall propose to the Board of Supervisors an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice. Articles 5.3 to 5.6 shall apply mutatis mutandis.

Article 6 – Binding mediation involving a competent authority of an EEA EFTA State

These Rules of Procedure shall apply to the settlement of a disagreement under binding mediation where at least one of the parties to the disagreement is a competent authority of an EEA EFTA State, with the following modifications:

- (1) A reference to Union acts shall apply to the extent that those acts are incorporated into the EEA Agreement and taking into account any adaptations made.
- (2) A competent authority of an EEA EFTA State shall submit a request for assistance to settle a disagreement to the EFTA Surveillance Authority, which shall without delay forward such request to EIOPA accompanied by information regarding the relevant legal requirements of Union acts as incorporated into the EEA Agreement.
- (3) The Chairperson shall inform the EFTA Surveillance Authority without delay of requests made by competent authorities of Member States which involve competent authorities of EEA EFTA States.
- (4) For the purposes of Article 2, the EFTA Surveillance Authority shall be an observer to the Panel.
- (5) For the purposes of Article 5(3), the Chairperson shall:
 - (i) inform the EFTA Surveillance Authority that it intends to propose a draft;

- (ii) set a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority based in an EEA EFTA State, which is the addressee of the decision to be taken to express its views on the matter. The time limit shall take full account of the urgency, complexity and potential consequences of the matter.
- (6) For the purposes of Article 5(4), the Panel shall submit a draft to the Board of Supervisors. EIOPA shall without undue delay submit the draft adopted by the Board of Supervisors to the EFTA Surveillance Authority or inform the EFTA Surveillance Authority if the draft could not be adopted.
- (7) For the purposes of Article 5(6), EIOPA shall coordinate publication of any decision with the EFTA Surveillance Authority.
- (8) Article 5(7) shall be replaced with the following: “Where a competent authority of an EEA EFTA State does not comply with the decision of the EFTA Surveillance Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2) of the Regulation as incorporated into the EEA Agreement, the EFTA Surveillance Authority shall without undue delay inform EIOPA. The Panel shall, where appropriate, propose a draft requiring the necessary action to comply with obligations under the EEA Agreement, including the cessation of any practice. EIOPA shall without undue delay submit a draft adopted by the Board of Supervisors to the EFTA Surveillance Authority.”

CHAPTER 3 – Non-binding mediation

Article 7 - Scope

Pursuant to Article 31(c) of the Regulation, in cases of disagreement between competent authorities, the competent authorities concerned or EIOPA by its own initiative may ask the Panel to facilitate an agreement using non-binding mediation according to rules set out in this chapter. Any request by EIOPA or a competent authority shall be without prejudice to their possibility to file the request referred to in Article 4 at any time.

Article 8 – Procedure

- (1) Where the Panel decides to assist on the basis of non-binding mediation under Article 31(c) of the Regulation, it may with the agreement of the parties appoint an individual to act as mediator in its place.
- (2) The Panel may summon the parties and, when appropriate, other relevant experts, for their testimony.
- (3) If the competent authorities concerned fail to reach an agreement the Panel may report back to the Board of Supervisors in accordance with Article 11 or consider whether to propose an opinion to the Board of Supervisors under Article 29(1)(a) of the Regulation.

- (4) The Panel shall set for the competent authorities:
 - (i) deadline for the transmission to the Panel and the other competent authorities of their allegations accompanied by the relevant documentation;
 - (ii) subsequent deadline to reply to the allegations of the other competent authorities.
- (5) Before proposing the opinion, the Panel shall inform the parties of its intention to propose the opinion, setting a time limit within which the parties may express their views on the matter. The time limit shall take full account of the urgency, complexity and potential consequences of the matter.
- (6) The Panel shall propose the opinion for final adoption by the Board of Supervisors under Article 29(1)(a) of the Regulation. The proposed opinion shall include:
 - (i) the identity of the addressees;
 - (ii) the opinion and the reasons on which it is based; and
 - (iii) where appropriate, the deadlines by which the addressees should take, or cease taking, any action proposed.
- (7) The proposed opinion shall be accompanied by materials setting out the views expressed by the parties on the proposed opinion, and by a recommendation on whether publication of the opinion would be in conflict with the legitimate interests of financial institutions in the protection of their business secrets, or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.
- (8) The Panel may make such other recommendations to the Board of Supervisors as it considers appropriate.

Article 9 – Non-binding mediation involving a competent authority of an EEA EFTA State

These Rules of Procedure shall apply for the non-binding mediation of a disagreement where at least one of the parties to the disagreement is a competent authority of an EEA EFTA State, with the following modifications:

- (1) A reference to Union acts shall apply to the extent that those acts are incorporated into the EEA Agreement and taking into account any adaptations made.
- (2) A competent authority of an EEA EFTA State shall submit a request for non-binding mediation to the EFTA Surveillance Authority, which shall without delay forward such request to EIOPA accompanied by information regarding the relevant legal requirements of Union acts as incorporated into the EEA Agreement.
- (3) The Chairperson shall inform the EFTA Surveillance Authority without delay

of requests for non-binding mediation made by competent authorities of Member States which involve competent authorities of EEA EFTA States.

- (4) For the purposes of Article 8(5), the Chairperson shall inform the EFTA Surveillance Authority that it intends to propose an opinion pursuant to Article 8(3).

CHAPTER 4 - Ancillary provisions

Article 10 – Confidentiality

- (1) The rules governing confidentiality in accordance with Article 70 of the Regulation and EIOPA's rules on professional secrecy which lays down practical arrangements for the implementation of the Regulation, shall apply to any person involved in the proceedings of the Panel.
- (2) A request may be made to the Panel for the confidential treatment of a document or any information contained in a document to be filed in connection with a disagreement which is before the Panel.
- (3) In determining the request, the Panel shall have regard as appropriate to the relevant provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Article 11 - Monitoring and compliance

The Chairperson shall take any necessary steps to monitor whether addressees of opinions or decisions comply and report regularly to the Board of Supervisors.

Article 12 - Reporting of the Panel's activities

- (1) The Panel shall report periodically to the Board of Supervisors on its activities. Such reports shall not identify the parties to disagreements unless the parties have consented.
- (2) In the report referred to in Article 50(2) of the Regulation, the Chairperson shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.
- (3) EIOPA's annual report referred to in Article 53(7) of the Regulation shall state in a summary form the disagreements brought before EIOPA and the Panel, the Panel's decisions, and the subsequent decisions of the Board of Supervisors pursuant to Articles 19(3) and 31(c) of the Regulation.

Article 13 - Supplementary rules

- (1) The Panel may adopt supplementary internal rules to regulate its proceedings and activities. In particular, the Panel may adopt standard timetables which may make provision for different types of disagreement.

The timetables may be adjusted by the Panel to take into account, inter alia, the level of complexity and urgency of a particular disagreement.

- (2) The Panel may issue supplementary forms and guides.
- (3) Supplementary rules, forms and guides adopted by the Panel shall be reported to the Board of Supervisors.

Article 14 – Miscellaneous

- (1) These rules of procedure and any supplementary internal rules, forms and guides shall be published on EIOPA's website.
- (2) The rules of procedure and any supplementary internal rules, forms and guides shall be communicated to the parties to the disagreement. This may be done by referring the parties to the place on EIOPA's website where they are published.
- (3) These rules of procedure shall enter into force the day after their adoption and replace other mediation protocols adopted by EIOPA or the Committee of European Insurance and Occupational Pensions Funds Supervisors which are revoked as of the same date.

Done at Frankfurt am Main, on 14 June 2012
Amended at Frankfurt am Main, on 21 December 2017

Gabriel Bernardino

Chair of EIOPA
For the Board of Supervisors

ANNEX

Election of Panel members and alternates

1. Nominations for the members of Panel and the four substitutes shall be submitted in writing by the candidates themselves to the Executive Director no later than ten working days before the start of the meeting of the Board of Supervisors at which the election is to take place and shall be communicated to the members of the Board of Supervisors.
2. Candidates shall submit a brief résumé in support of their candidature at the time of the nomination.
3. The Chairperson may advise the Board of Supervisors on a balanced composition of the Panel, taking account of EIOPA's competence in the insurance and occupational pensions' sectors and its responsibilities for supervision at the consolidated level and at the solo level.
4. The election requires a simple majority of the Voting Members. Each Voting Member shall have one vote. In case there is an election for one position in the Panel or as substitute, the procedure as outlined under Articles 7.14, 7.15 and 7.16 of the Rules of procedure of the Board of Supervisors shall apply. In derogation from Article 7.16, in case there are more vacant positions in the Panel or as substitutes, the election as outlined under Articles 7.17, 7.18. and 7.19 of the Rules of procedure of the Board of Supervisors shall apply.