

# RESULTS OF THE PEER REVIEW ON PROPRIETY OF ADMINISTRATIVE, MANAGEMENT OR SUPERVISORY BODY MEMBERS AND QUALIFYING SHAREHOLDERS

Executive Summary

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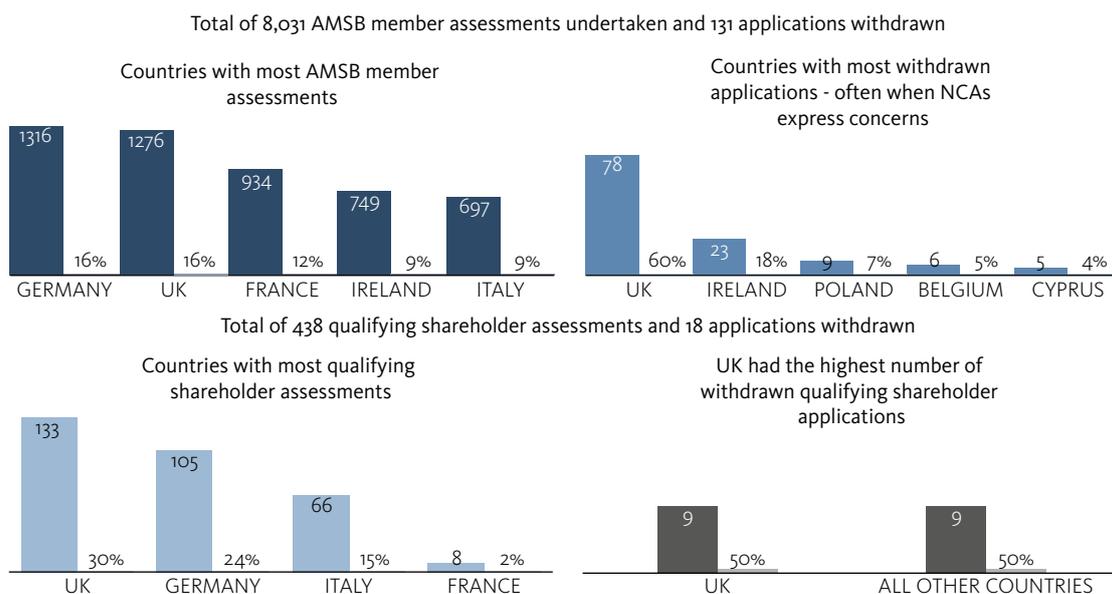
## EXECUTIVE SUMMARY

Behaviour steers businesses. Character influences governance. Conduct dictates the integrity of the financial health and reporting of businesses. Behaviour, character and conduct often contribute to the likelihood of failure and unfair treatment of consumers. This is particularly true for the insurance business whose survival and sustainability rely heavily, throughout its lifecycle, on the use of professional judgement and assumptions from interpreting current trends to predicting future developments.

## BACKGROUND AND OBJECTIVES

The Solvency II framework requires that insurance and reinsurance undertakings ('insurers') are owned and run by persons of integrity and of good repute to ensure sound and proper management of insurers. The primary responsibility to ensure (fitness and) propriety of administrative, management or supervisory body (AMSB) members at all times rests with insurers, with national competent authorities (NCAs) carrying out their assessment following the assessment by insurers. Similarly, any acquisition of or changes to qualifying holdings are subject to review and approval by NCAs. During the reference period from 1 January 2016 to 15 May 2017, NCAs dedicated considerable resources to assess 8,031 AMSB applications and 131 changes to qualifying shareholders. The tables below provide an overview of the countries that assessed the most number of applications and countries with most number of applications withdrawn<sup>1</sup>.

### Statistical overview of propriety assessments



Source: National Competent Authorities where available for the period from 1 January 2016 to 15 May 2017

<sup>1</sup> Includes one change to qualifying shareholder application refused by IVASS, Italy.

A number of cross-border cases have indicated a lack of harmonisation in relation to the propriety assessment of AMSB members and qualifying shareholders across the European Economic Area (EEA). This lack of harmonisation led to potentially divergent outcomes in different countries in relation to the same persons. This peer review was initiated on foot of these cases with an aim to examine the causes of a lack of harmonisation and recommend actions to enhance supervisory convergence in the area of (fitness and) propriety.

To demonstrate the practical challenges and opportunities of (fit and) proper assessments, five case studies have been included in this report. As part of the peer review, the European Insurance and Occupational Pensions Authority (EIOPA) assessed legal frameworks, supervisory practices and cross-border cooperation across all EEA countries.

Any improvements implemented by NCAs after the reference period were outside the scope of this peer review and will be taken into account during the follow-up measures.

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## PEER REVIEWS: AN ESSENTIAL OVERSIGHT TOOL

The main task of EIOPA is to enhance supervisory convergence, strengthen consumer protection and preserve financial stability.

Through its oversight function, underpinned by the Authority's founding regulation, EIOPA supports national supervisory authorities in their tasks to deliver high-quality effective supervision, as well as overseeing the level playing field and appropriate application of supervisory measures within the EEA.

Working closely with national supervisors, EIOPA has developed a range of tools to support oversight. In this context, peer reviews have proved essential as

a means of strengthening consistency in the outcome of supervisory actions. Peer reviews have also proved productive in strengthening dialogue within and between supervisory authorities and in facilitating sharing of best practices.

EIOPA conducts peer reviews based on an agreed methodology, with experts from national supervisory authorities acting as reviewers in coordination with EIOPA. In line with its mandate, the outcome of peer reviews, including identified best practices, are made public with the agreement of the NCAs that have been subject to the peer review.

## MAIN FINDINGS

The peer review identified a number of findings, risks and best practices, leading to recommended areas of action.

## OVERVIEW OF RISKS, FINDINGS AND RECOMMENDED ACTIONS

Key areas of risks, findings and recommended actions for NCAs and EIOPA to mitigate key risks identified are set out below.

### National legislation or regulatory framework

- EIOPA found that a number of legislation or regulatory frameworks are not aligned with the European framework and NCAs are applying different standards and scope while assessing propriety.
- In relation to the definition of propriety of AMSB members, there appears to be significant variation with respect to whether and when to consider ongoing prosecution and pending investigations for criminal and administrative offences. Further, when assessing AMSB members, a number of NCAs do not formally, in practice, take into account situations relating to past and present financial soundness of the concerned candidate such as personal bankruptcy or inclusion on a list of unreliable debtors.
- Generally, there is a better compliance with the definition or scope of propriety for qualifying shareholders due to the fact that the majority of the NCAs complied with the 3L3 guidelines during the reference period.

**Twelve recommended actions require nine NCAs to seek changes to national legislation or regulatory framework**

Area of recommended action	Authorities concerned
These changes relate to either strengthening the scope of the propriety assessment or enhancing the NCAs' legal powers to take necessary actions in relation to AMSB members. For example, a number of regulatory frameworks do not provide for consideration of pending investigations of criminal offences, administrative sanctions or personal bankruptcy. Similarly, certain NCAs lack the power to assess non-executive AMSB members or take timely action in relation to AMSB members such as power to remove AMSB members when considered not proper. The shortcomings expose the NCAs to a less robust propriety assessment and expose the internal market to the risk of different outcomes across countries (e.g. person considered proper in one EEA country but not proper in another or improper person who can be removed in one country but not in another).	Financial and Capital Market Commission (Latvia), Croatian Financial Services Supervisory Agency (Croatia), Financial Supervision Authority (Estonia), Bank of Greece, Istituto per la Vigilanza sulle Assicurazioni (Italy, 2 recommended actions), Commissariat aux assurances (Luxembourg, 2 recommended actions), National Bank of Slovakia, Insurance Supervision Agency (Slovenia, 2 recommended actions), Dirección General de Seguros y Fondos de Pensiones (Spain)

### Propriety assessment questionnaires

**Two recommended actions require two NCAs to include explicit questions in their questionnaires on specific elements of the 5 bases of propriety assessments**

The NCAs in Belgium and Poland need to amend their questionnaires to incorporate specific questions in relation to tax and consumer protection offences (Belgium), respectively, involvement in bankruptcies, AML, financial soundness of the applicant and doing business without a licence (Poland). Both countries already have the legal basis in place to consider the 5 bases of propriety assessments, however inclusion of explicit and specific questions in their questionnaires will strengthen their legal and regulatory frameworks.	National Bank of Belgium Komisja Nadzoru Finansowego (Poland)
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### Ongoing assessment of propriety of qualifying shareholders and AMSB members

- EIOPA found that propriety assessments of AMSB members and qualifying shareholders are completed as a one-off task with very few NCAs performing any ongoing assessment as part of their supervisory activities.
- The form and structure of key aspects of the assessment process vary significantly across NCAs. For example, not all NCAs impose a requirement on insurers to monitor propriety on an ongoing basis whereas others have prescribed a timeframe for reassessment of propriety. While, the nature and form of processes are not explicitly prescribed by the Solvency II (SII) Directive or the Delegated Regulations, the propriety requirements need to be met at all times and well established processes result in efficiency and effectiveness in propriety assessments and consistency in outcomes.

**Twenty-five recommended actions require twenty-five NCAs to carry out, using a risk-based and proportionate approach, ongoing assessment of propriety of qualifying shareholders and twelve recommended actions require twelve NCAs to carry out ongoing assessment of propriety of AMSB members following the initial approval**

Initial assessment at appointment and ad-hoc or triggered assessment of AMSB members and qualifying shareholders receive sufficient attention from NCAs. The frequency of *ad-hoc or triggered* assessment generally depends on new evidence or facts brought to NCAs' attention by insurers. (Fitness and) propriety assessment is not reviewed or examined as part of NCAs' ongoing supervisory activities using a risk-based approach. As explained later in the report, the recommended actions are to be applied in a proportionate manner. The following text from the report reflects this: *'Most importantly this assessment should be carried out as part of the NCAs' supervisory activities and should not seek to replicate the acquiring transaction review process i.e. completion and submission of forms by the shareholders and/or supervised insurers and review by the NCAs.'* Annex 3 outlines some examples of how an ongoing propriety assessment of AMSB members and qualifying shareholders can be implemented by using a risk-based and proportionate approach and without replicating the process used for initial or ad-hoc assessments. With respect to proportionality for example in relation to qualifying shareholders the guidance contained in supervisory practice 1 of the Annex 3 clarifies that *'EIOPA's view is that it is not necessary for [...] to ensure 100% coverage of [...] insurers on an annual basis, the propriety aspects can be assessed by following a risk-based approach...'*

#### *In relation to qualifying shareholders*

Finanzmarktaufsicht (Austria), National Bank of Belgium, Financial Supervision Commission (Bulgaria), Croatian Financial Services Supervisory Agency (Croatia), Cyprus Insurance Companies Control Service, Czech National Bank, Danish Financial Supervisory Authority, Financial Supervision Authority (Finland), Autorité de contrôle prudentiel et de résolution (France), Bundesanstalt für Finanzdienstleistungsaufsicht (Germany), Bank of Greece, Magyar Nemzeti Bank (Hungary), Financial and Capital Market Commission (Latvia), Central Bank of Ireland, Finanzmarktaufsicht (Liechtenstein), Bank of Lithuania, Commissariat aux assurances (Luxembourg), De Nederlandsche Bank (Netherlands), Finanstilsynet (Norway), Komisja Nadzoru Finansowego (Poland), Insurance Supervision Agency (Slovenia), National Bank of Slovakia, Dirección General de Seguros y Fondos de Pensiones (Spain), Finansinspektionen (Sweden), Prudential Regulation Authority (United Kingdom)

#### *In relation to AMSB members*

Cyprus Insurance Companies Control Service, Financial Supervision Authority (Finland), Autorité de contrôle prudentiel et de résolution (France), Bundesanstalt für Finanzdienstleistungsaufsicht (Germany), Finanzmarktaufsicht (Liechtenstein), Commissariat aux assurances (Luxembourg), De Nederlandsche Bank (Netherlands), Finanstilsynet (Norway), National Bank of Slovakia, Dirección General de Seguros y Fondos de Pensiones (Spain), Finansinspektionen (Sweden), Prudential Regulation Authority (United Kingdom)

### Guidance and supervisory records

- EIOPA found that a number of NCAs did not make their supervisory expectations and standards known internally to their supervisory staff and externally to insurers.
- For the maintenance of supervisory records, a number of NCAs either do not have databases or do not maintain information for cases that were withdrawn following concerns raised by the supervisory authorities. The lack of records exposes the European internal market to a risk that relevant information is not captured in one country for future assessments or sharing with NCAs in other countries.

#### **Thirteen recommended actions require eleven NCAs to either improve or develop internal or external guidance and seven recommended actions require seven NCAs to either improve or develop their supervisory records or databases**

Eleven NCAs to develop or improve their internal or external guidance in relation to propriety assessment of AMSB members or qualifying shareholders. External guidance ensures that insurers and proposed acquirers are aware of the NCAs' expectations and the process to follow whereas the internal guidance contributes towards consistent process and outcomes. Seven NCAs are recommended to develop or improve their supervisory records or databases in relation to propriety assessment as, at present, information in relation to the nature and circumstances pertaining to withdrawn applications is not captured, particularly when applications are withdrawn on foot of NCAs' concerns. A lack of proper supervisory records increases the risk that important supervisory concerns are not considered during future assessments or shared with other NCAs resulting in approval at a future date or in a different country.

#### *In relation to guidance*

Financial Supervision Commission (Bulgaria), Czech National Bank, Danish Financial Supervisory Authority, Financial Supervision Authority (Estonia, 2 recommended actions), Financial Supervision Authority (Finland), Bundesanstalt für Finanzdienstleistungsaufsicht (Germany), Istituto per la Vigilanza sulle Assicurazioni (Italy), Financial and Capital Market Commission (Latvia), Commissariat aux assurances (Luxembourg, 2 recommended actions), Autoridade de Supervisão de Seguros e Fundos de Pensões (Portugal), Finansinspektionen (Sweden)

#### *In relation to supervisory records*

National Bank of Belgium, Danish Financial Supervisory Authority, Autorité de contrôle prudentiel et de résolution (France), Bank of Greece, Istituto per la Vigilanza sulle Assicurazioni (Italy), National Bank of Slovakia, Dirección General de Seguros y Fondos de Pensiones (Spain)

## Follow up steps for EIOPA

### Impact of lack of harmonisation of civil and criminal laws on propriety assessments

- EIOPA found that lack of harmonisation of civil and criminal laws across the EEA has the potential to result in gaps in information gathering and assessment.
- With EEA authorities, the peer review has highlighted a number of areas that could potentially result in impediments between countries in relation to propriety assessment within the internal market. There are two very different approaches to cross-border cooperation. In responding to cross-border requests, some NCAs consult their own as well as other national sources of information – essentially completing the same steps as they would complete for their own assessments. Other NCAs consult only their own records or databases. In addition, there are also cases where, notwithstanding the fact that NCAs consult each other in order to receive information concerning the propriety of a particular person, the final outcomes in the assessment diverge due to different applications of the assessment criteria. Furthermore, from the responses received by the requesting NCAs, it is not always clear what sources were consulted and checks performed, potentially exposing the NCAs to different understanding of the scope of the verification completed.

#### **EIOPA will aim to strengthen the process involving information gathering at national level**

EIOPA will assess the need to develop explicit questions for NCAs to incorporate in their assessment to ensure that the supervisory processes to gather information are comprehensive and differences in criminal and civil laws of countries are not resulting in gaps in terms of information gathering and assessment. EIOPA will also develop some guiding principles and a template for cross-border cooperation.

**Complex cross-border cases of propriety assessment**

- EIOPA found that complex cross-border cases of propriety assessment involving two or more NCAs are prolonged assessments taking several months to complete.
- In some complex cross-border cases, records or information about supervisory concerns are maintained in one country whereas the appointment application is lodged in another country. Since sharing of information, in particular information about concerns that could lead to refusal of application, is often quite a cumbersome process, in complex cases, NCAs from countries can support one another by conducting joint assessments and interviews to ensure that the process is efficient as well as effective.

***EIOPA will aim to strengthen and support the process by developing a brief guidance or working protocol<sup>(2)</sup>***

In these cases, sharing all relevant information in an effective and timely manner is a challenge leading to the risk that some important information is not shared between NCAs or the propriety assessment is not robust. EIOPA will encourage NCAs to undertake joint interviews to ensure robust and timely propriety assessments.

**Strengthening of legal powers of NCAs**

EIOPA found that the legal powers for NCAs provided in the SII Directive need to be strengthened. The aim is to enhance the same, particularly in relation to the NCAs' ability to take action in case a qualifying shareholder is not considered proper following the approval of an acquisition as well as the power to seek information from qualifying shareholders and other related parties.

EIOPA will consider if an improvement in the legal basis in the SII Directive is needed (e.g. Article 19 of the SII Directive) and whether this could be included as part of the SII review that EIOPA will conduct starting in 2019.

**BEST PRACTICES****The regulatory framework of an NCA ensures accountability of individuals and allows it to take timely action in case of supervisory breaches**

The Prudential Regulation Authority (PRA) in the United Kingdom regime sets out a number of responsibilities to be discharged by one or more controlled functions. The framework of responsibilities ensures clarity in setting out the PRA's overall expectations and assigning these responsibilities to individual roles. This ensures individual accountability as roles and responsibilities are clearly defined, including for the assessment of (fitness and) propriety and provide a strong basis for enforcement actions or assessment of future applications.

The PRA has also implemented a policy statement on regulatory references that enables insurers to request employment references from previous employer(s) when recruiting individuals into certain functions or roles using a set form. The references provide a mechanism for the supervised insurers to ensure that the AMSB members are both fit and proper at all times as required by Article 42 of the SII Directive and Article 273 of the Delegated Regulations.

<sup>2</sup> The primary responsibility to make decisions continues to rest with the home NCA.

### **The supervisory assessment of AMSB members takes into account records that are comprehensive in their nature and scope**

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The Federal Office of Justice in Germany uses the European Judicial Network for the facilitation of judicial cooperation in criminal matters. The criminal register in Germany is operated by the Federal Office of Justice and the Register holds domestic judgments of criminal courts and - after an assessment entailing a comparison of laws - foreign criminal convictions handed down against German citizens or against foreigners living in Germany. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) considers the European certificate of criminal record in its assessment.

### **Legislation provides a framework that explicitly requires NCAs within the same country to share information with each other**

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De Nederlandsche Bank (DNB) supervises banks, pension funds, insurers as well as payment insurers while the Dutch Authority for the Financial Markets (AFM) is responsible for financial market and conduct supervision. For fit and proper assessments of management and supervisory board members, DNB is obliged by law to consult the AFM. The two NCAs may decide to attend assessment interviews of the other authority. Also, section 7, paragraph 1 of the Decree on Prudential Rules provides an exhaustive list of authorities the authority is permitted to consult.

### **A database that ensures (fitness and) propriety information is readily available**

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The Central Bank of Ireland (CBI) has a database that captures historical information on candidates on a name basis, tracks withdrawals and in addition flags people that have been refused approval or require in-depth assessments. The database tracks the employment history of all individuals which enables supervisors to link individuals to insurers where supervisory issues arose in the past.

The existence of a historical database combined with the flagging system on all assessments may assist an NCA in its work by making the process much more effective and efficient and is also beneficial for the effective cross-border cooperation and information sharing with other NCAs in view of Article 31(1) of the SII Directive.

### **Possibility to stay an assessment (or put an assessment on hold) in case of pending investigations**

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The Financial Market Authority (FMA) of Liechtenstein is under certain circumstances able to put an assessment on hold. This is particularly useful given that assessment of propriety is a time sensitive supervisory task. Article 4, §3 of the Insurance Supervision Ordinance (ISO) permits the FMA, in case of a pending proceeding for criminal or administrative offences, to 'suspend its assessment'. When an applicant is facing a pending criminal or administrative sanction proceeding, an ability to suspend the assessment by the authority may provide a practical alternative to deciding between two options that may pose future challenges for the authority.

### **The development of a well-structured framework to support ongoing verification**

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A well-structured framework includes:

- clear and detailed internal guidelines;
- systematic verification of information transmitted by the proposed acquirer of qualifying shareholding;
- consultation with several authorities (Courts, Central Bank, Financial Intelligence Units, etc.) to establish whether or not there exists any adverse information;
- requiring qualifying shareholders to provide notification and details of any material changes to the information previously provided to the supervisory authority.

The framework implemented by the Istituto per la vigilanza sulle assicurazioni (IVASS – the Italian national supervisory authority) meets all of the above attributes and results in a supervisory process that appraises or verifies the propriety of qualifying shareholders on a continuous basis, as is envisaged by Article 59, 34 and other related provisions of the SII Directive.

### **Legal and regulatory framework to support a structured approach for ensuring that the AMSB members meet (fit and) proper requirements at all times**

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The National Bank of Slovakia (NBS) requires the insurers to reassess AMSB members every two years and to advise the supervisory authority in case of material changes. During the on-site inspection the supervisors review reassessments, on a sample basis, and verify whether the insurer followed propriety policies.

The practice supports the requirements of Article 42(1)(b) of the SII Directive which states that (re)insurers shall ensure that all persons who effectively run the insurer or have key functions at all times fulfil the (fit and) proper requirements.

## **IMPACT ON THE CREATION OF A COMMON SUPERVISORY CULTURE**

A common supervisory culture is a key objective for EIOPA and is underpinned by a shared understanding of and approach to supervision. Such a culture cannot be built overnight but is the outcome of continuous open dialogue between national authorities.

This peer review has highlighted differences in national legal and regulatory frameworks as well as in supervisory processes in relation to propriety assessments. As a result, EIOPA has sought to bring a common understanding of areas of national legal and regulatory frameworks as well as in supervisory practices.

The identification of best practices will enable NCAs to benefit from each other's experience and the recommended actions, if implemented, will result in increased harmonisation and better alignment with the European regulatory framework. Furthermore, there are four recommended actions for implementation by EIOPA that will further strengthen the internal market.

## CONCLUSIONS AND NEXT STEPS

EIOPA considers that the recommended actions will significantly strengthen the regulatory frameworks and supervisory practices in the area of (fit and) proper requirements across NCAs. From a supervisory convergence perspective, the implementation of recommended actions will promote effective and consistent supervision, build on a common interpretation of laws and regulations, and without prejudice to the application of supervisory judgment or the proportionality principle. The actions sought from the NCAs will assist them in delivering on the main objective of supervision<sup>3</sup>: the protection of policyholders and beneficiaries.

A refusal by an NCA can be challenged before a court of law or an administrative tribunal. A sound legal and regulatory framework and supervisory practices provide a robust basis to the NCAs to defend their decision. During the appeal process, the NCAs often have to explain, in addition to the purely legal aspects, the need to ensure that persons working within the insurance sector meet the (fitness and) propriety requirements to protect the interest of society at large. Section 6 and Annex 2 explain the role of (fit and) proper requirements and the need for (fit and) proper requirements as a supervisory tool.

Following the completion of the peer review, EIOPA will take follow-up measures in accordance with EIOPA's Methodology for conducting peer reviews:

- Compliance with the recommended actions will be assessed in due course. Several NCAs have already committed to implementing the recommended actions addressed to them, including seeking legislative changes.
- It should also be checked how the identified best practices have inspired NCAs in developing their supervisory practices.
- The follow-up will also include the recommended actions to EIOPA and assess their developments.

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<sup>3</sup> In accordance with Article 27 of the SII Directive.

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