

Decision of the European Insurance and Occupational Pensions Authority on peer reviews

The Board of Supervisors

Having regard to the Regulation 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, EIOPA), amending decision No 716/2009/EC and repealing Commission Decision 2009/79/EC ('the EIOPA Regulation')¹, and in particular Articles 8(1)(e) and 30 thereof,

Whereas:

- (1) Article 30 of the EIOPA Regulation establishes that the European Insurance and Occupational Pensions Authority (EIOPA) shall conduct peer reviews on the activities of competent authorities with regard to specific topics, to further strengthen consistency and effectiveness of supervisory outcomes. Therefore, a methodology must be developed in order to allow for an objective assessment and comparison between the competent authorities reviewed.
- (2) Peer reviews consist of an assessment of and comparison between competent authorities, on the topics set out in Article 30(3) of the EIOPA Regulation. Peer reviews are an efficient and effective tool for fostering convergence and consistency within the network of competent authorities. Peer reviews focus not only on the convergence of supervisory practices, but also on the capacity of competent authorities to achieve high-quality supervisory outcomes. Moreover, peer reviews facilitate open dialogue that helps to establish a common understanding and exchange of supervisory experience, as well as the identification of best practices. Finally, peer reviews can contribute to a further harmonisation of Union rules applicable to financial institutions or competent authorities.
- (3) Article 30 of the EIOPA Regulation was amended by Regulation 2019/2175 of the European Parliament and of the Council of 18 December 2019². Under the new Article 30 of the EIOPA Regulation, several changes were introduced to peer reviews conducted by EIOPA regarding its governance but also its output, which includes the publication of reports.

¹ OJ L 331, 15.12.2010, p. 48–83.

² OJ L 334, 27.12.2019, p. 1–145.

- (4) In addition, the scope of peer reviews is further clarified by Article 30 of the EIOPA Regulation. It includes, at least, an assessment of the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards, implementing technical standards, guidelines and recommendations issued by EIOPA; of the effectiveness and degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law; and of the application of best practices developed by competent authorities whose adoption might be of benefit for other competent authorities. Furthermore, the peer review includes an assessment on the adequacy of resources, the degree of independence and governance arrangements of the competent authority.
- (5) The Decision of the European Insurance and Occupational Pensions Authority adopting the methodology for the conduct of peer reviews (EIOPA-BoS-18-354) is repealed and replaced by this Decision in order to update said methodology in light of the above mentioned amendment to the EIOPA Regulation.

HAS ADOPTED THIS DECISION:

Title I – Subject matter, scope and definitions

Article 1

Subject matter and scope

1. This Decision establishes a framework for peer reviews in line with Article 30 of the EIOPA Regulation including the selection of its topics, the governance and methodology for conducting peer reviews.
2. This Decision is applicable to all peer reviews conducted by EIOPA under Article 30 of the EIOPA Regulation.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

- a) ‘competent authority’ means any authority or body as defined in Article 4(2) of the EIOPA Regulation;
- b) ‘national peer review coordinator’ means a person from a competent authority appointed as a single-point-of contact for peer reviews;
- c) ‘EIOPA’s working groups’, means any of the Working Groups listed in Article 2(1) of the Rules of Procedure of the Working Groups of the EIOPA³;

³ Decision adopting the rules of procedure of the working groups of the European Insurance and Occupational Pensions Authority (EIOPA-BoS-20-497).

- d) 'conflict of interest' means any current, potential or perceived circumstance that bears the potential, or causes the perception, to unduly influence the performance of a member of an ad hoc peer review committee in the course of the participation in the peer review.

Title II – Framework for peer reviews

Article 3

Scope of the peer review

The peer review shall include an assessment of, but shall not limited to:

- a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the legislative acts referred to in Article 1(2) of the EIOPA Regulation and the capacity to respond to market developments;
- b) the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16 of the EIOPA Regulation, and the extent to which the supervisory practice achieves the objectives set out in Union law;
- c) the application of best practices developed by competent authorities whose adoption might be of benefit for other competent authorities;
- d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative sanctions and other administrative measures imposed against persons responsible where those provisions have not been complied with.

Article 4

Peer review work plan

1. The Management Board shall prepare a proposal for a two-year peer review work plan, which shall constitute a separate part of the annual and multiannual working programme, and which shall include the topic, rationale, scope, timeline of the peer reviews, and interconnection to any other relevant work developed by EIOPA.
2. When deciding on the topic and scope of a peer review, including a selection of specific EU legislation and supervisory practices for a specific peer review, the following non-exhaustive criteria are taken into account:
 - a) relevance of the topic as regards EIOPA's competences in line with Article 1(6) of the EIOPA Regulation;
 - b) relevance of the provisions and supervisory practices to a sufficient number of competent authorities;
 - c) relevance of the topic from a cross-border perspective;
 - d) relevance of the topic as regards different practices in the implementation of the European Union's (EU) regulatory framework;

- e) timeliness of the peer review, *e.g.* previous and on-going EIOPA work in the area or time passed since the entry into force of relevant Union law;
 - f) existence of relevant guidance on which to conduct a peer review (e.g. EU legislation, technical standards, EIOPA guidelines or other EIOPA instruments and convergence tools to promote common supervisory approaches and practices);
 - g) whether the peer review of the relevant provisions and practices may inform regulatory developments;
 - h) lessons learned from past peer reviews and discussions of coordination groups referred to in Article 45b of the EIOPA Regulation, where applicable; and
 - i) the importance of convergence in supervisory practices and supervisory outcomes.
3. The two-year peer review work plan shall also take into account the need to undertake follow-up reports in line with Article 30(6) of the EIOPA Regulation.
 4. The two-year peer review work plan shall be approved by the Board of Supervisors according to the procedure in Article 44(4) of the EIOPA Regulation and will be made public once approved.
 5. In case of unforeseen or urgent events, the Board of Supervisors may approve an extraordinary peer review not foreseen in EIOPA's two-year peer review work plan, including, where necessary, the suppression of one or more phases of the methodology set out in Title III.

Article 5

Composition of the ad hoc peer review committee

1. The ad hoc peer review committee is composed of EIOPA staff and staff members of competent authorities who are knowledgeable of the activities covered by the scope of the peer review.
2. Ad hoc peer review committees shall be chaired by an EIOPA staff member with adequate seniority on the topic covered by the peer review.
3. The ad hoc peer review committee, including a reserve list depending on the number of candidates, shall be composed of staff from competent authorities and EIOPA as proposed by the Chairperson of EIOPA after consulting the Management Board and following an open call for participation, and deemed to be approved by the Board of Supervisors unless, within 10 days of the Chairperson's proposal, the Board of Supervisors adopts a decision to reject it.
4. The work of ad hoc peer review committees shall be assisted by EIOPA staff, who shall be responsible for the quality and consistency of the methodology followed in the peer reviews in accordance with this Decision, the day-to-day management of the work of the ad hoc peer review committee, and the expert support on the topics covered by the ad hoc peer review committee.
5. Competent authorities are recommended to contribute to peer reviews by nominating experts for ad hoc peer review committees at least once every three years.
6. Competent authorities and EIOPA shall ensure that the nominated experts and the chair of the ad hoc peer review committee are able to allocate sufficient time to actively and substantially contribute to all phases of the peer review.

Article 6

Cooperation with EIOPA's working groups

The ad hoc peer review committee may seek to clarify aspects related to the topic under the peer review with any of the EIOPA's working groups as well as request the latter to cooperate in such peer review, in accordance with its terms of reference.

Article 7

Cooperation with ad hoc peer review committees established by other European Supervisory Authorities

1. In accordance with its terms of reference, an ad hoc peer review committee may cooperate with ad hoc peer review committees established by other European Supervisory Authorities, including through the conduct of joint peer reviews.
2. Where a joint peer review is agreed upon, specific rules for said exercise shall be adopted by the Joint Committee based on such decision.

Article 8

Cooperation with external parties

1. The ad hoc peer review committee may seek information from external parties on issues relevant for the assessment, provided the confidentiality of its work is guaranteed.
2. For the purposes of this decision, external parties shall comprise, without limitation:
 - a) other authorities which are not competent authorities, such as authorities pertaining to the European System of Financial Supervisors, international organisations, supranational bodies or national authorities which have a direct or indirect responsibility in the topic covered by the peer review; and
 - b) any legal or natural person who is affected or may be affected by, or have any type of legitimate interest or responsibility in the subject being examined in the context of a peer review.

Article 9

Confidentiality and conflict of interest

1. The members of the ad hoc peer review committee or any person participating or contributing to the peer review, including the external parties mentioned in Article 8, shall not disclose or use any confidential information obtained in the context of a peer review for other purposes than those of the relevant peer review.
2. All members of the ad hoc peer review committee or any person participating or contributing to the peer review, including the external parties mentioned in Article 8, shall be subject to EIOPA's

rules on professional secrecy⁴, and as such shall be bound by suitable confidentiality agreements.

3. The members of the ad hoc peer review committee and, if applicable, the external parties mentioned in Article 8, shall sign the confidentiality undertaking provided in Annex I to this Decision.
4. The members of the ad hoc peer review committee shall declare any situation of conflict of interest using the template provided in Annex II.

Article 10

Reduction of scope and waiver from the peer review

1. Where the topic covered by the peer review is not materially relevant to a given competent authority:
 - a) the scope of the peer review may be reduced by the chair of the ad hoc peer review committee to the competent authorities to which the topic is relevant; or
 - b) the competent authority may request a waiver to the chair of the ad hoc peer review committee supported by sufficient evidence within two weeks following the launch of the peer review in line with Articles 15 and 16(1).
2. The reduced scope or the waiver shall be approved by the Executive Director, upon proposal from the chair of the ad hoc peer review committee and, subsequently, the Board of Supervisors shall be informed of such decision.

Title III – Methodology for peer reviews

Chapter 1 – Principles governing peer reviews and stages thereof

Article 11

General principles for peer reviews

1. The members of the ad hoc peer review committee act independently in order to warrant a neutral and objective assessment.
2. In accordance with paragraph 1 of this Article, the members of the ad hoc peer review committee are not actively involved in the work of the peer review with respect to their competent authority or relevant jurisdiction as regards the activities set out in Sections 5 and 6 of Chapter 2 and in Sections 5 to 6 of Chapter 3 of this Decision.
3. The ad hoc peer review committee shall conduct all its activities applying the ‘four eyes principle’.
4. All relevant information is documented and organised in a way which ensures an audit trail of the peer review.
5. Without prejudice to extraordinary peer reviews in accordance with Article 4(5), the waiver set out

⁴ Article 70 of the EIOPA Regulation and Decision (EIOPA-MB-17-039) of the Management Board adopting rules of procedure on professional secrecy for non-staff, and repealing decision of the Management Board of 10 January 2011 on professional secrecy and confidentiality (EIOPA-MB/008).

in Article 10 of this Decision, and the scope of the peer review set out in accordance with Article 4(1) of this Decision, the peer review shall be conducted for all competent authorities within the timeline set out in the terms of reference, in order to minimise the risk of uneven or biased results.

6. Existing information and evaluations already made with regard to the competent authority concerned, including any relevant information available to EIOPA, may be taken into account in the peer review taking due account of confidentiality aspects.
7. The peer review shall focus on supervisory practices of competent authorities, taking into account any existing national measures which are effectively applied by said authorities.
8. The ad hoc peer review committee, the competent authorities reviewed under the peer review and EIOPA shall engage in an active and cooperative manner.
9. Competent authorities shall participate in the peer review by providing timely and high-quality responses throughout the peer review.

Article 12

Stages of the peer review

Each peer review shall consist of two stages:

- a) a review by peers, which shall provide an independent, objective and consistent assessment of competent authorities regarding any topic under the two-year peer review work plan set out in Article 4(1) or covered by an extraordinary peer review in line with Article 4(5) of this Decision, on an individual and comparative basis, resulting in a final report which may address recommended actions to competent authorities and highlight best practices, as well as draw conclusions on actions that could be performed by EIOPA to better achieve its objectives under Article 1(6) of the EIOPA Regulation;
- b) a follow-up of the review by peers, which shall include, without limitation, an assessment of the adequacy and effectiveness of the implementation measures enacted to address the recommended actions set out in the peer review report, resulting in a follow-up report.

Chapter 2 – Review by peers

Section 1 – Phases of the review by peers and coordination with EIOPA’s structures

Article 13

Phases of the review by peers

The review by peers comprises the following phases:

- a) establishment phase, which, without prejudice to Article 4(5) of this Decision, comprises the launch of the peer review in line with the two-year peer review plan and the establishment of an ad hoc peer review committee;
- b) preparatory phase, which comprises the distribution of tasks within the ad hoc peer review committee, the definition of the assessment criteria, the adoption of the terms of reference of the peer review, and the drafting and testing of the self-assessment

- questionnaire;
- c) self-assessment phase, which comprises the launch of the self-assessment questionnaire; completion of the self-assessment questionnaire by the competent authorities; and check of the completeness and accuracy, of the responses provided by competent authorities;
 - d) review phase, which comprises the assessment of the responses to the self-assessment questionnaire; the performance of fieldwork, and the preparation thereof, to further investigate relevant aspects related to the responses provided in the self-assessment questionnaire; the assessment of the responses of the fieldwork; and the preparation and drafting of assessment letters to be sent to competent authorities;
 - e) final outcomes phase, which comprises the preparation and drafting of the report setting out the results of the peer review, the factual check of the report by the national peer review coordinators, its approval by the Board of Supervisors of EIOPA and its publication; and
 - f) monitoring phase, where competent authorities shall inform EIOPA, upon request and where relevant, on the status of the implementation of recommended actions set out in the peer review report.

Article 14

Coordination with the Management Board and EIOPA committees

During phases b) to e) mentioned in the previous article:

- a) the Management Board may require an update on the peer review in order to perform an assessment on whether the methodology is being applied in a consistent manner; and
- b) the ad hoc peer review committee may inform or consult any of EIOPA's relevant steering committees and other permanent committees set out in Article 2(1)(a) and 2(1)(d) of the Rules of Procedure of the Working Groups of the EIOPA on any highlighted issues relevant to the peer review.

Section 2 – Establishment phase

Article 15

Launch of the peer review

The launch of the peer review shall be triggered by the call for candidates mentioned in Article 16(1) of this Decision.

Article 16

Setting-up of the ad hoc peer review committee

1. For each peer review, the EIOPA chairperson shall launch an open call for participation for an ad hoc peer review committee, whereby competent authorities are invited to nominate experts having sufficient knowledge and expertise in respect of the provisions and supervisory practices

- under review and, if possible, experience in peer reviews.
2. The open call for participation shall include the topic, rationale, scope, timeline and necessary resources for the peer review, including the necessary professional experience to participate in the ad hoc peer review committee.
 3. EIOPA staff shall assess applications from competent authorities to ensure that candidates meet the criteria set out in the call for participation.
 4. In accordance with Article 5(3) of this Decision:
 - a) the number of members of the ad hoc peer review committee shall be proportionate to the scope and objectives of the peer review;
 - b) the Management Board shall be consulted on the composition of the ad hoc peer review committee for each peer review, based on the applications received from competent authorities and from EIOPA;
 - c) following the consultation with the Management Board, the EIOPA chairperson shall propose the chair and the members of the ad hoc peer review committee, including a reserve list in accordance with Article 5(3) of this Decision, to the Board of Supervisors; and
 - d) the proposal shall be considered approved by the Board of Supervisors unless, in accordance with Article 30(2) of the EIOPA Regulation, the Board of Supervisors adopts a decision to reject it within 10 days of the EIOPA chairperson proposing the members of the ad hoc peer review committee and the reserve list.

Section 3 – Preparatory phase

Article 17

Terms of reference

Once the ad hoc peer review committee is approved, its first task is to draft the terms of reference of the peer review, which are based on the mandate provided in the two-year peer review work plan, and describe in detail the purpose and the scope of the peer review, its reference period, timeline, peers' expectations and relating assessment criteria.

Article 18

Reference period

1. A reference period shall be established for each peer review.
2. Decisions on the length of the reference period shall be taken within the context of the peer review.
3. Where appropriate, the reference period may be different for different aspects covered by the peer review.

Article 19

Assessment criteria

The assessment criteria shall comprise the essential elements and intended outcomes set forth in the EU regulatory framework, guidance from EIOPA or any other relevant provisions which competent authorities are expected to apply.

Article 20

Self-assessment questionnaire

1. The ad hoc peer review committee shall draft a self-assessment questionnaire addressed to competent authorities in order to gather a clear and comparable input of good quality from each competent authority to be reviewed in the review phase.
2. The self-assessment questionnaire shall be proportionate and in accordance with the terms of reference, and allow for a full description of the applicable regulatory framework, supervisory activities and other relevant aspects regarding the topic under review, with content and format that facilitate the comparison of the responses from competent authorities.
3. Before submitting the self-assessment questionnaire to the relevant competent authorities, EIOPA staff shall:
 - a) test the draft self-assessment questionnaire in order to ensure that questions are understandable and unambiguous; and
 - b) organise one or more clarification sessions in which the ad hoc peer review committee can address any questions raised by the national peer review coordinators.

Article 21

Peers' expectations

1. Peers' expectations set out what would be reasonable to expect from a competent authority, namely regarding supervisory practices and governance arrangements, considering the regulatory framework applicable to the topic under the peer review.
2. The ad hoc peer review committee shall prepare peers' expectations, which shall take into account the assessment criteria and the need to strengthen the consistency of supervisory outcomes through a uniformly high level of forward-looking, proactive, preventive, risk-based and proportionate supervisory practice.

Section 4 – Self-assessment phase

Article 22

Self-assessment by competent authorities

1. The self-assessment questionnaire mentioned in Article 20 of this Decision shall be sent to the competent authorities via their representatives at the Board of Supervisors, also informing the national peer review coordinators.
2. The deadline to respond to the questionnaire shall be determined by the ad hoc peer review committee depending on the scope and complexity of the project.
3. Competent authorities shall provide high-quality responses to the questionnaire in English language, which should be accurate, coherent, concise and as complete as possible.
4. Where applicable, the responses are accompanied by sufficient evidence in English or, when an English version is not available or cannot be provided, by a short descriptive summary in English.
5. For the purposes of the previous paragraph, sufficient evidence shall be understood, without limitation, as supporting documentation, on specific cases handled and supervisory practices followed or any relevant national measures; in particular:
 - a) evidence in relation to cases handled or supervisory practices may include letters, minutes, records, exchange of emails;
 - b) evidence in relation to national measures may include national legislation or any other legally binding or non-legally binding measures, such as national guidelines, rules, principles, internal procedures or national competent authorities' handbooks, which allow for a clear demonstration of how the competent authority acted in respect of the issues subject to peer review.
6. Where applicable, unanswered questions, including a failure to respond to a request for additional information or clarification, or declining a peer review visit or conference call, not properly justified, shall be classified as 'non-contributing' and may lead to a statement of non-contribution as regards the overall assessment to be shown in the report.
7. Responses to the self-assessment questionnaire, as well as any evidence or additional documentation provided by competent authorities, are accessible to the ad hoc peer review committee, EIOPA staff providing assistance to said committee and, where needed, to the EIOPA senior management.

Section 5 – Review phase

Article 23

Fieldwork by the ad hoc peer review committee

1. The purpose of the fieldwork is to exchange supervisory experiences and to further assess supervisory practices by the competent authorities, in order to achieve a common understanding of supervisory actions and respective outcomes and to facilitate the identification of best practices.
2. Within the scope established by the terms of reference, and based on the preliminary findings following an assessment of the responses to the self-assessment questionnaire and any additional information provided in such context, for example, following additional questions aiming at clarifying the answers provided to the questionnaire, the ad hoc peer review committee shall establish priorities for the fieldwork, which consist of issues to be further addressed during the peer review in light of their importance.
3. The fieldwork may consist of one or more of the following activities:
 - a) written procedures;
 - b) teleconferences;
 - c) on-site visits;
 - d) off-site virtual visits; and
 - e) exchange of notes or additional information between the ad hoc peer review committee and the competent authorities following the previous activities.
4. The selection of the type of fieldwork to be performed is based on the preliminary findings in accordance with paragraph 2 of this Article, taking into consideration the resources available to the ad hoc peer review committee, and the following criteria:
 - a) extent of the experience in a particular area with a view to exploring any potential best practice;
 - b) potential extent of the misapplication of any measures set out in the EU regulatory framework;
 - c) the relative significance of the competent authority as regards the topic under review, which can be assessed, among other criteria, through relevant market size and level of activity;
 - d) relevance of the issue subject to peer review at national level and from a cross-border perspective, affecting more than one EEA jurisdiction;
 - e) non-contribution, insufficiency of responses to the self-assessment questionnaire or information requested; and
 - f) inconsistency or lack of clarity of responses provided in the self-assessment questionnaire.
5. Competent authorities under review ensure that the ad hoc peer review committee and relevant EIOPA Staff have access to all relevant information requested, including documents, information on individual financial institutions, where necessary.
6. Competent authorities under review ensure that staff with relevant expertise for the topics covered by the fieldwork is available during the fieldwork.

Article 24

Final assessment of input provided by the competent authorities

Following the fieldwork, the ad hoc peer review committee shall perform an individual and comparative evaluation of the supervisory practices and other relevant aspects pertaining to the competent authorities against the assessment criteria and the peers' expectations defined in Articles 19 and 21 of this Decision, respectively.

Article 25

Recommended actions

1. Once the final assessment is concluded, the ad hoc peer review committee shall propose recommended actions, which can be addressed to one or more competent authorities in order to either:
 - a) address partial compliance or non-compliance with the applicable EU regulatory framework, significant divergence of supervisory practices or any other problem or deficiency of a particular jurisdiction; or
 - b) improve the available tools and supervisory practices relevant for the topic under peer review.
2. When proposing recommended actions, the ad hoc peer review committee may also provide general guidance on how such recommended actions could be implemented, including a timeframe for implementation.
3. Recommended actions shall be appropriate, proportionate and necessary to achieve the envisaged outcome.
4. Recommended actions may, when adequate, be adopted by EIOPA in the form of recommendations pursuant to Article 16 of the EIOPA Regulation.

Article 26

Actions by EIOPA

1. The ad hoc peer review committee may highlight aspects that would benefit from an action by EIOPA, such as recommendations, guidelines, opinions or any other form of guidance for competent authorities, namely where:
 - a) such action could be undertaken to address any issue related to problems to the operation of the Single Market or different interpretations of applicable Union law; or
 - b) such action could actively contribute to promote the improvement of available tools and supervisory practices relevant for the topic under peer review.

Article 27

Best practices

1. The ad hoc peer review committee shall identify any best practices developed by competent authorities.

2. Best practices are those which can promote efficiently and effectively the policy objectives of the applicable regulatory framework or enhance the quality and convergence of supervisory practices under the scope of the peer review, and whose adoption might be of benefit for other competent authorities.
3. Best practices do not have binding force, but they may serve as a basis for developing legal instruments under Article 16 of the EIOPA Regulation, or, in line with Article 29 of the EIOPA Regulation, for developing new practical instruments and convergence tools to promote common supervisory approaches and practices.

Article 28

Assessment letter

1. The assessment letter is drafted by the ad hoc peer review committee and summarises the findings with respect to the individual competent authorities, including recommended actions.
2. All findings included in the assessment letter shall be grounded on the findings of the ad hoc peer review committee and be duly motivated.
3. The draft assessment letter shall be sent by the EIOPA Executive Director to the member of the Board of Supervisors representing the competent authority.
4. The member of the Board of Supervisors representing the competent authority, in response to the draft assessment letter, shall explain the competent authority's position in relation to the views expressed by the ad hoc peer review committee.
5. The deadline to respond to the assessment letter shall be determined by the ad hoc peer review committee depending on the scope and complexity of the project.
6. Following the interaction in paragraph 4 of this Article, the ad hoc peer review committee shall prepare a final version of the assessment letter, which shall be sent by the EIOPA Executive Director to the member of the Board of Supervisors representing the competent authority.

Section 6 – Final outcomes phase

Article 29

Peer review report

1. The peer review report is the main output of the review by peers. It is based on the analysis of the answers and other information provided by the competent authorities during the self-assessment phase, review phase, and the consultations made by the ad hoc peer review committee in line with Articles 6 to 8 of this Decision.
2. The peer review report shall include, without limitation:
 - a) the extent to which competent authorities apply the relevant regulatory provisions, achieve convergence in supervisory practices and consistency in supervisory outcomes;
 - b) an assessment, for each competent authority, of the global level of achieved convergence with the applicable regulatory framework as well as with peers' expectations as regards the topic covered by the peer review;

- c) reasoned main findings on specific issues encountered, including those related to individual competent authorities, such as inconsistencies in supervisory outcomes, differences in interpretation, or general problems in the implementation of or potential breaches of EU law, regulatory or implementing technical standards or non-compliance with guidelines or recommendations issued by EIOPA;
 - d) any recommended actions addressed to a competent authority;
 - e) impact on common supervisory culture;
 - f) actions by EIOPA;
 - g) a description of best practices developed and implemented by competent authorities; and
 - h) the assessment criteria.
3. The ad hoc peer review committee shall consult the relevant national peer review coordinator to allow the performance of a fact check by the competent authorities.
 4. The ad hoc peer review committee shall consult the Management Board on the draft of the peer review report in order to ensure methodological consistency within the peer review and with other peer reviews, thereby ensuring a level playing field among competent authorities.

Article 30

Approval of the final peer review report

1. The Board of Supervisors shall approve the final peer review report via written procedure, and such document shall be considered approved unless, in accordance with Article 44(4) of the EIOPA Regulation, a simple majority of voting members objects to its approval within 8 working days.
2. In accordance with Article 44(4) of the EIOPA Regulation, if three voting members of the Board of Supervisors object to the written procedure, the draft final peer review report shall be discussed and decided by the Board of Supervisors in accordance with the procedure set out in Article 44(1) of the EIOPA Regulation.
3. Where the reasoned main findings of the Board of Supervisors differ from those identified by the ad hoc peer review committee, EIOPA shall transmit, on a confidential basis, the ad hoc peer review committee's findings to the European Parliament, the Council and to the Commission.
4. A competent authority which has strong objections to the reasoned main findings in relation to its supervisory practices or recommended actions may submit a written statement to be annexed to the peer review report before its publication, subject to review by the chairperson of EIOPA following a bilateral dialogue with the competent authority.

Article 31

Publication of the peer review report

1. The peer review report, including the reasoned main findings, shall be published on EIOPA's website.
2. Where a competent authority is concerned that the publication of some parts of the peer review report would pose a risk to the stability of the financial system, it may refer the matter to the Board of Supervisors, which may decide not to publish those extracts.

Section 7 – Monitoring phase

Article 32

Monitoring

Following the publication of the peer review report and ahead of the launch of the follow-up of the review by peers, competent authorities shall send to EIOPA, upon request and where relevant, an update on the progress of implementation of the recommended actions addressed to them.

Chapter 3 – Follow-up of the review by peers

Section 1 – Phases of the follow-up of the review by peers and coordination with EIOPA’s structures

Article 33

Phases of the follow-up of the review by peers

1. The follow-up of the review by peers shall be initiated no later than two years after the publication of the final report of the review by peers.
2. The follow-up of the review by peers comprises the following phases:
 - a) launch phase, which comprises the launch of the follow-up of the review by peers and, to the extent possible, the recall of the ad hoc peer review committee which previously conducted the review by peers;
 - b) preparatory phase, which comprises the distribution of tasks within the ad hoc peer review committee; the establishment of evaluation criteria; the specification of the implementation expectations and fulfilment criteria; the preparation and drafting of the terms of reference; the drafting and testing of the follow-up of the review by peers questionnaire;
 - c) reporting phase, which comprises the launch of the follow-up of the review by peers questionnaire; completion of the follow-up of the review by peers questionnaire by the competent authorities; and completeness check of the responses provided by competent authorities and further clarification thereof;
 - d) evaluation phase, which comprises the performance of fieldwork to further investigate relevant aspects related to the answers provided in the follow-up of the review by peers questionnaire; the assessment and grading of the responses of the follow-up of the review by peers questionnaire and the fieldwork against the evaluation criteria; and the assessment of the implementation of best practices;
 - e) final outcomes phase, which comprises the drafting, by the ad hoc peer review committee, of a follow-up report, the factual check of the report by the national peer review coordinators, its approval by the Board of Supervisors, and the publication of the follow-up report; and

- f) monitoring phase, which comprises the monitoring of recommended actions unfulfilled or partially fulfilled at the time of the publication of the follow-up report.

Article 34

Coordination with the Management Board and EIOPA committees

During phases b) to e) mentioned in the previous article:

- a) the Management Board may require an update on the follow-up of the review by peers in order to perform an assessment on whether the methodology has been applied in a consistent manner; and
- b) the ad hoc peer review committee may inform or consult EIOPA's relevant steering committees and other permanent committees set out in Article 2(1)(a) and 2(1)(d) of the Rules of Procedure of the Working Groups of the EIOPA on any highlighted issues relevant to the follow-up of the review by peers.

Section 2 – Launch phase

Article 35

Launch of the follow-up of the review by peers

1. The launch of the follow-up of the review by peers shall be triggered with the recall of the ad hoc peer review committee.
2. To the extent possible, the composition of the ad hoc peer review committee that shall undertake the follow-up of the review by peers shall be the same as that of the review by peers and, where such is not possible, and the number of members is deemed insufficient, applicants from the reserve list mentioned in Article 16(5) of this Decision can be invited to participate in the follow-up of the review by peers.
3. Where a sufficient number of members of the ad hoc peer review committee is still not achieved, an additional open call for participation to the ad hoc peer review committee shall be launched, in line with Article 16 of this Decision.

Section 3 – Preparatory phase

Article 36

Evaluation criteria

1. The evaluation criteria set the requirements for the intended outcome set forth in recommended actions addressed to the competent authorities and are composed of the implementation expectations and the fulfilment criteria.
2. In line with Annex III, the interplay between the implementation expectations and the fulfilment criteria shall provide the grading as regards the implementation of the recommended action by the competent authority.

Article 37

Implementation expectations

1. Implementation expectations describe the actions required from the competent authorities to achieve the substantive goals of the relevant recommended actions and should identify what measures taken by the relevant competent authority would be suited to achieve that objective.
2. The implementation expectations may include guidance to the competent authority on how such recommended actions under Article 25 of this Decision could have been implemented, if not already identified in the recommended actions.

Article 38

Fulfilment criteria

1. The fulfilment criteria specify how the different actions or inactions undertaken by the competent authorities to implement a recommended action will be graded.
2. The number of grading steps used in the fulfilment criteria for each recommended action will vary depending on the nature and configuration of the latter.

Article 39

Terms of reference

Once the follow-up of the review by peers is launched, the first task of the ad hoc peer review committee shall be to draft the terms of reference of the follow-up of the review by peers and describe in detail its purpose and scope, as well as its reference period, timeline and evaluation criteria, including the weight of each recommended action in the overall follow-up of the review by peers measures recommended to a given competent authority.

Article 40

Follow-up of the review by peers questionnaire

1. The ad hoc peer review committee shall draft a follow-up of the review by peers questionnaire in order to gather a comparable input from each competent authority subject to the follow-up of the review by peers.
2. The follow-up of the review by peers questionnaire shall be set up in a way that allows for a full description of the measures, namely at organisational, supervisory and/or regulatory level which were implemented to address the recommended actions published in the peer review report.
3. The follow-up of the review by peers questionnaire may also include questions on the implementation of best practices previously identified during the review by peers conducted under Chapter 2 of Title III of this Decision.
4. Before submitting the follow-up of the review by peers questionnaire to the relevant competent authorities, EIOPA staff shall:
 - a) test the draft follow-up of the review by peers questionnaire in order to ensure that questions are understandable and unambiguous; and

- b) organise one or more clarification sessions in which the ad hoc peer review committee can address any questions raised by the national peer review coordinators.

Section 4 – Reporting phase

Article 41

Reporting by competent authorities

1. The follow-up of the review by peers questionnaire mentioned in Article 40 of this Decision shall be sent to the competent authorities via the member of the Board of Supervisors representing the competent authority, also informing the national peer review coordinators.
2. The deadline to respond to the questionnaire shall be determined by the ad hoc peer review committee depending on the scope and complexity of the project.
3. Competent authorities shall provide high-quality responses to the questionnaire in English language, which should be accurate, coherent, concise and as complete as possible.
4. Where applicable, the responses are accompanied by sufficient evidence in English or, when an English version is not available or cannot be provided, by a short descriptive summary in English.
5. For the purposes of the previous paragraph, sufficient evidence shall be understood, without limitation, as supporting documentation, on specific cases handled and supervisory practices followed or any relevant national measures; in particular:
 - a) evidence in relation to cases handled or supervisory practices may include letters, minutes, records, exchange of emails;
 - b) evidence in relation to national measures may include national legislation or any other legally binding or non-legally binding measures, such as national guidelines, rules, principles, internal procedures or national competent authorities' handbooks, which allow for a clear demonstration of how the competent authority acted in respect of the issues subject to peer review.
6. Where applicable, unanswered questions, including a failure to respond to a request for additional information or clarification, or declining a peer review visit or conference call, not properly justified, shall be classified as 'non-contributing' and may lead to a statement of non-contribution as regards the overall assessment to be shown in the report.
7. Responses to the follow-up of the review by peers questionnaire as well as any evidence or additional documentation provided by competent authorities are accessible to the ad hoc peer review committee, EIOPA staff providing assistance to said committee and, where needed, to the EIOPA senior management.

Section 5 – Evaluation phase

Article 42

Fieldwork by the ad hoc peer review committee

1. The purpose of the field work during the follow-up of the review by peers is to further clarify certain aspects of the implementation of the recommended actions.

2. The fieldwork may consist of any of the following activities:
 - a) written procedures;
 - b) teleconferences;
 - c) on-site visits;
 - d) off-site virtual visits; and
 - e) exchange of notes or additional information between the ad hoc peer review committee and the competent authorities following the previous activities.
3. The selection of the type of fieldwork to be performed is based on the preliminary findings resulting from the follow-up of the review by peers questionnaire mentioned in the previous article, taking into consideration the resources available to the ad hoc peer review committee, and the following criteria:
 - a) potential extent of the misapplication of any measures set out in the EU regulatory framework;
 - b) potential lack of implementation of recommended actions in the context of the review by peers;
 - c) relative significance of the competent authority as regards the topic under review, which can be assessed, among other criteria, through relevant market size and level of activity.
 - d) relevance of the issue subject to peer review at national level and from a cross-border perspective, affecting more than one EEA jurisdictions;
 - e) non-contribution, insufficiency of responses to the follow-up of the review by peers questionnaire or information requested; and
 - f) inconsistency or lack of clarity of responses provided in the follow-up of the review by peers questionnaire.
4. Competent authorities under review shall ensure that the ad hoc peer review committee and relevant EIOPA staff have access to all relevant information requested, including documents, access to supervisory platforms or information on individual financial institutions, where necessary.
5. Competent authorities under review shall ensure that staff with relevant expertise for the topics covered by the fieldwork is available during the fieldwork.

Article 43

Evaluation

1. Following the fieldwork, the ad hoc peer review committee shall perform an individual and comparative evaluation of all the measures taken by the competent authority to implement the recommended actions set out in the peer review report against the evaluation criteria in accordance with Articles 36 to 38 of this Decision.
2. Competent authorities shall receive a grade per recommended action that will reflect their level of implementation of the recommended actions addressed to them.
3. The grading shall be made in accordance with the methodology set out in Annex III of this Decision.
4. The ad hoc peer review committee shall also take due account of the implementation of best practices that may have been highlighted in the peer review report.
5. The level of implementation of best practices shall not be graded.

Section 6 – Final outcomes phase

Article 44

Follow-up report

1. The follow-up report is the main output of the follow-up of the review by peers and is based on the analysis of the responses and other information provided by the competent authorities during the reporting phase, the evaluation phase, and the consultations made by the ad hoc peer review committee in accordance with Articles 6 to 8 of this Decision.
2. The follow-up report shall include, without limitation:
 - a) progress reports on each competent authority, which shall include, at least:
 - i. main reasoned findings on specific issues encountered *vis a vis* the implementation of recommended actions by individual competent authorities; and
 - ii. an assessment, for each competent authority, of the level of achieved progress in the implementation of recommended actions or best practices identified in the peer review report;
 - b) a grading table including all competent authorities which received recommended actions, and the level of implementation of the latter, expressed in one of the grades set out in Annex III; and
 - c) the description of the implementation, by the competent authorities, of the best practices identified in the peer review report.
3. The ad hoc peer review committee shall consult the relevant national peer review coordinator to allow the performance of a fact check by the competent authorities.
4. The ad hoc peer review committee shall consult the Management Board on its draft of the follow-up report in order to ensure methodological consistency within the peer review and with other peer reviews, thereby ensuring a level playing field among competent authorities.

Article 45

Approval of the follow-up peer report

1. The Board of Supervisors shall approve the final follow-up report via written procedure, where that document shall be considered approved unless, as per Article 44(4) of the EIOPA Regulation, a simple majority of voting members objects to such approval within 8 working days.
2. In line with Article 44(4) of the EIOPA Regulation, if three voting members of the Board of Supervisors object to the written procedure, the draft follow-up report shall be discussed and decided on by the Board of Supervisors in accordance with the procedure set out in Article 44(1) of the EIOPA Regulation.
3. Where the reasoned main findings of the Board of Supervisors differ from those identified by the ad hoc peer review committee, EIOPA shall transmit, on a confidential basis, the ad hoc peer review committee's findings to the European Parliament, the Council and to the Commission.

4. A competent authority which has strong objections to the reasoned main findings in relation to the implementation of recommended actions may submit a written statement to be annexed to the follow-up report before its publication, subject to review by the chairperson of EIOPA following a bilateral dialogue with the competent authority.

Article 46

Publication of the follow-up report

1. The follow-up report, including the reasoned main findings, shall be published on EIOPA's website.
2. Where a competent authority is concerned that the publication of some parts the follow-up report would pose a risk to the stability of the financial system, it may refer the matter to the Board of Supervisors, which may decide not to publish those extracts.

Section 7 – Monitoring phase

Article 47

Monitoring

1. Regarding the completion of unfulfilled or partially fulfilled recommended actions, all concerned competent authorities shall inform EIOPA, upon request and where relevant, within 6 months from the approval of the follow-up report, about the further progress achieved on the implementation of the recommended actions.
2. The Board of Supervisors shall be informed on the above mentioned monitoring exercise and its outcome shall be published.

Title IV– Final Provisions

Article 48

Revision

The framework for peer reviews and the methodology for a peer review, in accordance with Article 30 of the EIOPA Regulation, are subject to revision, upon proposal from the Chairperson from EIOPA, after consulting the Management Board and subject to approval by the Board of Supervisors.

Article 49

Repeal

This Decision repeals and replaces the Decision of the European Insurance and Occupational Pensions Authority adopting the methodology for the conduct of peer reviews (EIOPA-BoS-18-354).

Article 50

Entry into force

This Decision enters into force immediately.

ANNEX I

Confidentiality Undertaking

This Confidentiality Undertaking is made by:

Title: Name: Surname:

Hereinafter the "party"

Organisation/Company:

Country:

I hereby declare to abide by the following arrangements:

§ 1 Definitions

Whenever used in this Confidentiality Undertaking, the following words and terms shall have the meaning set out below:

"EIOPA Activities" means any activity related to [*please insert project title*] in which I am involved for the purposes of the implementation of the tasks and powers of the European Insurance and Occupational Pensions Authority (EIOPA). Such activities may include, but are not limited to, meetings with EIOPA staff members or external stakeholders, including preparation of, or follow-up on, such meetings, attendance at [*please insert project title*] related discussions or other [*please insert project title*] related activity held at EIOPA's Board of Supervisors, Management Board, working groups and structures, expert networks, colleges of supervisors, etc.

"Confidential Material" means any information, data or documents, whatever their medium (oral, written on paper or stored in electronic form or as a sound, visual or audiovisual recording) of which the party acquires knowledge, directly or indirectly, as a result of their involvement in EIOPA Activities. "Confidential Material" shall not include information, data or documents: (a) that are or become publicly available, except through a breach of confidentiality by the party; (b) the disclosure or use of which has been authorised by EIOPA in writing; (c) the disclosure of which is required by law.

§ 2 Handling and use of Confidential Material

I acknowledge that in the course of my involvement in EIOPA Activities, I shall obtain Confidential Material that may relate to EIOPA and its internal affairs, or to commercially sensitive and confidential information about third parties, and hereby undertake:

- to treat all Confidential Material in the strictest confidence, and not disclose it to anyone except EIOPA staff involved in the implementation of the **[please insert project title]**, who are bound by the professional secrecy obligations laid down in EIOPA's legal framework and EU law, or subject to the exemptions set out in Decision (EIOPA-MB-17-039);
- not to disclose, or authorise other persons or entities to disclose, Confidential Material to a third party without EIOPA's prior written consent;
- to use Confidential Material only for the purpose for which it was disclosed, and not use or exploit such Confidential Material for my own benefit or for the benefit of any other person;
- to store Confidential Material securely, and ensure that unauthorised persons have no access to such Confidential Material.

§ 3 EIOPA's professional secrecy regime

I also understand that I am subject to the following decisions/rules:

2. Article 70 of Regulation (EU) No 1094/2010 including any EIOPA arrangements implementing this provision⁵, and Article 339 Treaty on the Functioning of the European Union;
3. EIOPA Management Board Decision concerning the Protection of Information Systems and Information (EIOPA-MB-14/034);
4. EIOPA Security Policy (POL/LSO/35);
5. Information Security Working Instructions – Rules on Handling EIOPA Information and Documents (WOI/LSO/36);
6. EIOPA Decision of the Management Board Adopting Rules of Procedure on Professional Secrecy for Non-Staff (EIOPA-MB-17-039).

EIOPA's professional secrecy regime shall prevail over this confidentiality undertaking in case of conflict.

This undertaking shall not be limited in time but shall not apply to any Confidential Material that I can prove was lawfully known to me before the date of this undertaking, or to Confidential Information which lawfully becomes public knowledge other than as a result of a breach of any of the above undertakings or applicable law.

⁵ Decision (EIOPA-MB-17-039), available at:
<https://www.eiopa.europa.eu/sites/default/files/publications/administrative/management-board-decision-professional-secrecy.pdf>

I confirm that I will keep all matters entrusted to me confidential and will process the personal data I receive only for the purposes of the performance of the [follow up] peer review [*please specify which peer review*]. If unnecessary or excessive personal data are contained in the documents submitted during the peer review, I will not process them further or take them into account for the above mentioned [follow-up] peer review.

I understand that I shall be subject to criminal prosecution if I am involved in unlawful disclosure of Confidential Material to which I have access.

I HAVE READ THIS CONFIDENTIALITY UNDERTAKING, UNDERSTAND IT, AND AGREE TO ITS TERMS.

I acknowledge having received a copy of this confidentiality undertaking and the (electronic) copy of the abovementioned acts under § 3 EIOPA's professional secrecy regime.

Signature	Date/ Place
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ANNEX II

Declaration of interests by members of the ad hoc peer review committee

First name	
Surname	
Competent authority and EEA jurisdiction	
Role in the ad hoc peer review committee	
Interest	

I hereby declare that the declaration provided in the table above is truthful and complete.

I confirm that whenever in the course of my participation in the peer review I have a conflict of interest (any current, potential or perceived circumstance that could unduly influence my performance in the peer review, or cause the perception of influencing my performance, or be prejudicial to my impartiality, objectivity or independence)⁶, I will without undue delay alert the chair of the ad hoc peer review committee and the relevant EIOPA staff.

Date:

Signature:

⁶ For examples of potential conflict of interest situations, see Article 1(2)(c) of the EIOPA's Decision of the Management Board adopting a Policy on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff.

ANNEX III

Grading Methodology for the Follow-up of the review by peers

Each competent authority is assessed and graded in terms of fulfilment of the recommended action. There are grades for action and for inaction. The grades used for action are the following: *fulfilled*, *partially fulfilled*, *not fulfilled*, *non-contributing*. The grade used for inaction is the following: *not fulfilled yet sufficiently explained*.

GRADING SCHEME

GRADE	CRITERION
Fulfilled	All implementation expectations are met without any significant deficiencies supported by the ad hoc peer review committee's (PRC) judgement in assessing the recommended action. <i>[Description of concrete fulfilment criteria]</i>
Partially fulfilled	Some of the implementation expectations are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed, supported by the ad hoc PRC's judgement in assessing the recommended action. <i>[Description of concrete fulfilment criteria]</i>
Not fulfilled yet sufficiently explained	The implementation expectations are not met at all or to an important degree, resulting in significant concerns about the overall effectiveness of the competent authority, and/or material risks left unaddressed supported by the ad hoc PRC's judgement in assessing the recommended action; however, a complete and well-reasoned explanation for the lack of implementation of the recommended action has been provided. <i>[Description of fulfilment criteria]</i>
Not fulfilled	The implementation expectations are not met at all or to an important degree, resulting in significant concerns about the overall effectiveness of the competent authority, and/or material risks left unaddressed supported by the ad hoc PRC's judgement in assessing the recommended action. <i>[Description of concrete fulfilment criteria]</i>
Non-contributing	Questions left unanswered (including a failure to respond to a request for additional information or clarification), failure to contribute within the prescribed deadlines or declining a peer review visit or conference calls will be classified as 'non-contributing' and may lead to a statement of non-contribution as regards the overall assessment.