



**EIOPA REGULAR USE**  
EIOPA-20-597  
29 September 2020

## **Peer review work plan 2020-2022**

## Introduction and general remarks

EIOPA will undertake peer reviews in the areas approved by the EIOPA Board of Supervisors. A peer review is especially a useful tool as it allows to monitor the implementation of benchmarks in the EEA, to challenge supervisory practices that are not aligned and thereby distorting the level playing field and to support NCAs with concrete recommended actions and identified best practices.

The peer reviews support EIOPA's work on implementing a common supervisory culture in areas where work to set the *benchmark* for supervisory processes and practices in addition to legislation *is available* by either standards, guidelines, supervisory statements, EIOPA decisions or a chapter in the Supervisory Handbook whilst EIOPA is aware that the *practices are still diverging*.

According to Article 30 of the EIOPA regulation the EIOPA Management Board prepares a *two-year peer review work plan* which is a separate part of the annual work programme and Single Programme Document (SPD). As it is the first work plan under the new governance structure, being approved in Q3 of this year, and due of the COVID-19 pandemic, the underlying work plan covers the period 2020-2022 (three years)<sup>1</sup>. The topics for the peer review workplan have been discussed and agreed upon in the Management Board meeting in June 2020.

The peer review plan fully reflects EIOPA priorities looking forward. EIOPA will continue developing a vision for the future based on close monitoring of evolving conditions and acknowledgement of that the pandemic will have long-lasting effects on the European economy and its citizens. The pandemic also underlines the importance of continuing work already initiated and related to EIOPA's supervisory convergence programme and regulatory framework. Ensuring a holistic approach, whereby both prudential and conduct risks are sufficiently addressed is key to ensure the policyholders' protection. As a result, building on ongoing supervisory convergence work, EIOPA will continue, and intensify, its work on conduct areas. The plan for the peer reviews for 2020-2022 are fully consistent with these two objectives.

EIOPA has adapted the *governance structure* (finalised in Q1 2020) and will update the *peer review methodology* by the end of the 2021 in accordance with the changes to EIOPA Regulation.

The changes in Article 30 of the EIOPA Regulation regarding Peer Reviews require that a *follow-up of a peer review* should be performed two years after the publication of the peer review report<sup>2</sup>. The aim of the follow-up peer reviews is to identify the progress made against the recommended actions by seeing into whether the NCAs have effectively implemented the recommended action(s) issued to them as part of the peer review process. As much as possible such exercises should also cover the recommendations addressed to EIOPA.

## Peer reviews and follow-ups to peer reviews

Topic: Peer Review on Regular Supervisory Report (closed in Q2 2020)

*Description:*

---

<sup>1</sup> The underlying SPD refers to 2021-2023. Because of this specific year with the ESAs regulation coming into place in 2020 and the COVID crisis, this first work plan is in terms of years not fully aligned with the underlying SPD.

<sup>2</sup> Article 30 of the EIOPA Regulation requires EIOPA to perform a follow-up two years after the publication of the peer review report. This work plan reflects the follow-up on the peer reviews finalised in 2018 and 2019 except for the peer review on supervisory practices with respect to the application of the prudent person rule for IORPS published in April 2019. As a follow-up action EIOPA is at first preparing a chapter in the supervisory handbook which is expected to be approved in January 2021. The follow-up peer review will therefore start at the earliest in 2023.

The Solvency II Directive introduced a number of supervisory reporting requirements, further specified in Delegated Regulation (EU) 2015/35. These include the requirement for undertakings to submit a regular supervisory report (RSR) to their NCA on a regular basis. Under the proportionate approach set out in the Delegated Regulation, all NCAs must decide if each undertaking has to submit a complete RSR or a summary RSR that documents any material changes. NCAs have to inform undertakings about their decision at least 3 months before the reference date. In line with Article 312(1)(a) of the Delegated Regulation, as a minimum, a full RSR needs to be submitted every 3 years. NCAs are expected to take a risk-based and proportionate approach when making decisions in this regard.

The main objectives were to assess how and to what extent the proportionate approach set out under the Delegated Regulation (EU) 2015/35 had been implemented and to determine if further convergence was needed on the definition of the frequency of submission of RSRs by supervisory authorities. The peer review identified divergent practices among NCAs in a number of areas, in particular, the implementation of the option to request a more frequent submission of the RSR than once every three years, the definition of 'material changes' and NCAs' requirements with regard to their official communication.

From this peer review published in April 2020, 51 recommended actions to 26 NCAs were issued and it was also used as input for the Solvency II 2020 review.

Topic: Peer Review on the Decision on the collaboration of the insurance supervisory authorities (ongoing, due date Q4 2020)

#### *Description*

Increased cross-border activities in the EU internal market makes strong, close and timely collaboration between insurance supervisory authorities crucial for effective supervision. The EIOPA Decision on the collaboration of the insurance supervisory authorities (Decision), which was the result of one of the recommended actions towards EIOPA as an outcome of the peer review on Freedom to provide Services (2015), is fundamental in reinforcing this collaboration and in building a common European supervisory culture. After the entry into force of the Decision in May 2017 cooperation among Home and Host NSAs has improved, though it is evident that there is still room for improvement.

The aim of this peer review is to assess the level of cooperation between supervisory authorities at the moment of the authorisation of insurance and reinsurance undertakings and notification of the establishment of a branch and/or the commencing of activities by way of freedom to provide services but also the continuous cooperation regarding cross-border activities. Furthermore the peer review assesses the cooperation between supervisory authorities in the case of portfolio transfers.

Topic: Follow up on the peer review on the supervisory practices for the application of the proportionality principle in governance requirements regarding key functions (preparations already ongoing, due date Q1 2021)

#### *Description*

The peer review on key functions published in November 2018 resulted in 25 recommended actions to 18 NCAs. As the peer review was conducted at the beginning of the implementation of the Solvency II framework, the recommended actions were all substantive e.g. on the lack of national written supervisory guidance, the lack of

monitoring and assessing of combinations of Key Functions Holders (KFHs) or the fitness of KFHs as well as not applying the EIOPA Guidelines on outsourcing.

In addition to the follow-up of the recommendations to each NCA it is foreseen to ask NCAs if they have made use of best practices collected and identified as such in the peer review report. The information on the level of implementation of the best practices and reasons for its implementation/non implementation will inform the decision of if and how to include these in the SRP Handbook.

This follow-up peer review is expected to be conducted on the basis of a desk-top review.

#### *A note on proportionality*

With respect to the combinations of key functions, the Solvency II 2020 review is discussing specific proposals to facilitate the application of the proportionality principle. Although the recommended actions of the peer review are based on the current Solvency II framework, they are focused on assessing and monitoring combinations in relation to different key functions on the basis of a pro-active and proper application of the proportionality principle in daily supervisory practices. The follow-up peer review will take into account the proposals in the context of the review of the proportionality framework to ensure that EIOPA messages in the follow-up report and the review of Solvency II are sufficiently aligned.

#### Topic: Peer review on outsourcing (not started yet, due date Q4 2021)

##### *Description*

Under Solvency II insurance and reinsurance undertakings may make use of outsourcing not only regarding operational tasks but as well for example to implement the key functions. In order to ensure effective supervision of outsourced functions or activities, it is essential that the supervisory authorities of the outsourcing insurance or reinsurance undertaking have access to all relevant data held by the outsourcing service provider, regardless of whether the latter is a regulated or unregulated entity, as well as the right to conduct on-site inspections. In order to take account of market developments and to ensure that the conditions for outsourcing continue to be complied with, the supervisory authorities should be informed prior to the outsourcing of critical or important functions or activities.

It is now observed that the area of outsourcing by insurance or reinsurance undertakings can potentially be important and significant in any Member State. Conducting a thorough analysis of NCAs' approaches to provisions stipulated in Solvency II framework, exchanging information and identifying any gaps will be beneficial to further strengthen consistency and effectiveness in supervisory outcomes. The evaluation could also be useful to address potential concerns about shell (mailbox) companies and service providers located in third countries, also with respect to post-Brexit issues. The outsourcing of functions of underwriting or claims handling to MGAs in case of cross-border business is one particular use of outsourcing which will deserve attention of the peer review as supervisory convergence in this area is important.

The aim of the peer review is to assess the application of relevant provisions of Solvency II framework related to outsourcing<sup>3</sup> and exchange experience and information about scope of outsourcing in EEA and identify best practices. The peer review assess NCAs' approaches to outsourcing and supervision of outsourced functions and activities. The

---

<sup>3</sup> Including Articles 38 and 49 of the Solvency II Directive, Article 274 of the Solvency II Delegated Regulation and Section 11 of EIOPA Guidelines on System of Governance.

project also builds upon the peer review on key functions where the outsourcing of key functions has been assessed, also considering the issues identified above.

Topic: Follow up on the peer review on propriety of administrative, management or supervisory body members and qualifying shareholders (not started yet, due date Q2 2022)

#### *Description*

This peer review published in February 2019 resulted in 80 recommended actions to 29 NCAs most importantly regarding the national legislation (lack of harmonisation resulting in issues in cross-border cases as well as strengthening of powers of some NCAs), lack of clarity of the supervisory expectations and standards as well as on the ongoing supervision of the assessments done by the undertakings.

In addition to the follow-up of the recommendations to each NCA it is foreseen to ask NCAs if they have made use of best practices collected and identified as such in the peer review report. The information on the level of implementation of the best practices and reasons for its implementation/non implementation will inform the decision of if and how to include these in the SRP Handbook.

Topic: Peer review on requirements on product oversight and governance (not started yet, due date Q4 2022)

#### *Description*

The Insurance Distribution Directive (IDD) requirements on Product Oversight and Governance (POG) came into force on 1 October 2018, followed by supervisory convergence work which resulted in a chapter of EIOPA Supervisory Handbook approved by the EIOPA Board of Supervisors in April 2020. POG requirements aim at ensuring that the interests of customers take prime importance during the design of a product and throughout the lifecycle of a product, including within arrangements for its distribution. In fact, while POG is a process-oriented requirement – i.e., ensuring adequate processes are followed – its focus on products means that the objective of POG requirements is to ensure that product related risks are sufficiently addressed and mitigated by ensuring that manufacturers and distributors develop adequate processes to avoid, identify and mitigate such risks for the products they manufacture and distribute.

Risks stemming out of products which offer poor value to consumers and which are not aligned with the target markets' needs, objectives and characteristics have been identified in several instances. The COVID-19 pandemic has often brought a change to the risk profile of several products, raising questions on fair treatment of consumers and POG – as also highlighted in EIOPA's statement – is a useful tool to ensure products are reviewed in a technically sound manner to guarantee customers' fair treatment while taking medium to long term perspective to ensure product sustainability.

The peer review intends to assess how NCAs supervise POG and its application in practices with regard to the target market assessment, product testing and product monitoring and review phase for insurance-based investment products and ancillary products. These are key phases of the POG and they also linked to the COVID-19 pandemic included in the narrative.