



EIOPA-BoS-18-354
28 September 2018

Decision of the European Insurance and Occupational Pensions Authority adopting the methodology for the conduct of peer reviews

The Board of Supervisors,

Having regard to the Regulation No 1094/2010¹ 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 Regulation'), and in particular Article 30 thereof,

Whereas Recital 40 of The Regulation states 'Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors'. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on the convergence of supervisory practices, but also on the capacity of supervisors to achieve high-quality supervisory outcomes, as well as on the independence of those competent authorities. The outcome of peer reviews should be made public with the agreement of the competent authority subject to the review. Best practices should also be identified and made public,

Whereas EIOPA has adopted a Decision establishing the Review Panel of the European Insurance and Occupational Pensions Authority,

Whereas EIOPA, in accordance with Article 6 of that Decision, shall define the methods to allow for objective assessment and comparison between the authorities reviewed,

Has adopted this decision:

Article 1

Amendments to the Methodology for the conduct of peer reviews

The Methodology for the conduct of peer reviews of 29 January 2016 (EIOPA-BoS-15-301) shall be amended as set out in the Annex to this decision.

¹ OJ L 331/48 of 15.12.2010

Article 2

Revision

This Methodology for the conduct of peer reviews is subject to revision, upon a proposal of the Review Panel, and subject to the approval of the Board of Supervisors.

Article 3

Entry into force

This decision shall enter into force on the day following that of its adoption.

Done at Frankfurt am Main on 28 September 2018.

ANNEX

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1. Introduction

General considerations

- 1.1. Peer reviews are conducted by the Review Panel in accordance with the provisions of Article 30 of The Regulation.
- 1.2. Peer reviews assess the application by National Competent Authorities (hereafter NCAs) represented in the EIOPA Board of Supervisors (hereafter EIOPA BoS) of EU measures, including directives, regulations, technical standards, EIOPA guidelines and recommendations, or supervisory practices. If the subject matter is of relevance, EIOPA could be included in the scope of peer review.
- 1.3. Peer reviews are an efficient and effective tool for fostering convergence and consistency within the network of financial supervisors. Peer reviews focus not only on the convergence of supervisory practices, but also on the capacity of supervisors to achieve high-quality supervisory outcomes.
- 1.4. Through the comparison and assessment of NCAs vis a vis their peers, peer reviews encourage open dialogue that helps achieve common understanding, exchange of supervisory experience and the identification of best practices.
- 1.5. The outcomes of a peer review are shared among all NCAs through a report covering findings, assessments, recommended actions to NCAs or EIOPA and best practices.
- 1.6. The recommended actions are addressed to NCAs, aiming at adjusting their supervisory practices in order to ensure convergence in application of EU Measures and to enhance the quality of supervisory practices and outcomes. The recommended actions may be addressed to EIOPA in relation to issues which are within EIOPA's remit, including issuing or revising guidelines or recommendations in accordance with Article 16 of the Regulation.
- 1.7. To ensure convergence of supervisory practices and the capacity to achieve high-quality supervisory outcomes, recommended actions are subject to appropriate follow-up.
- 1.8. Adequate consideration is given to best practices in order to inspire NCAs to benefit from each other's experience. Best practices do not have any normative or binding character and are not intended to disqualify other forms of implementation or application that may be more suitable for a specific NCA.
- 1.9. The results of a peer review, including best practices and an overview of the recommended actions, are published to inform interested stakeholders.
- 1.10. Peer reviews follow objective and transparent procedures.
- 1.11. NCAs under review and EIOPA engage in peer reviews in an active and timely manner.
- 1.12. Peer reviews particularly focus on the areas where there is a strong need for more consistent supervisory practices or to enhance the capacity of supervisors to achieve high-quality supervisory outcomes.

- 1.13. Any sensitive information obtained in the context of a peer review should not be disclosed or used for other purposes than those of the relevant peer review. Confidentiality obligations continue even after the completion of the peer review assignment.

Sound factual base

- 1.14. The peer review assessments focus on the actual practices of NCAs, taking into account any existing national measures. Any provisions assessed need to be effectively applied by NCAs. Their existence alone is not sufficient.

Peer review process

- 1.15. Peer reviews consist of five stages: preparatory stage, self-assessment, review by peers, final outcomes and follow-up.

Preparatory Stage	<ul style="list-style-type: none">• Selection of the topic, including the scope, timeframe and resources needed by EIOPA BoS• Nomination of Experts to join the Team of Reviewers and nomination of a Leader to coordinate the work of the Team of Reviewers• Drafting of Terms of Reference (hereafter ToR) by Team of Reviewers and approval by Review Panel• Use of existing information• Drafting of self-assessment questionnaire (applying assessment criteria, which are based on the ToR) by Team of Reviewers, testing of draft self-assessment questionnaire and approval of self-assessment questionnaire by Review Panel
Self-assessment	<ul style="list-style-type: none">• Launch of self-assessment questionnaire• Submission by NCAs of responses to the self-assessment questionnaire
Review by Peers	<ul style="list-style-type: none">• Comparative analysis, including any initial clarification of responses, and development of a draft Report² on Initial Findings by Team of Reviewers• Proposal by Team of Reviewers on the Priorities and Means of Field Work followed by discussion and approval by Review Panel• Field work by Team of Reviewers with steering by Review Panel• Submission by Team of Reviewers of the draft Final Report for Review Panel discussion and approval• Evaluation Letters from the Review Panel Chair to Heads of NCAs• Written responses by Heads of NCAs to the Evaluation Letters

² The Report on Initial Findings is developed further during the course of the peer review into the Final Report submitted to BoS.

Final Outcomes	<ul style="list-style-type: none"> • Submission by Team of Reviewers of the Final Report for Review Panel discussion and agreement <p>Preparation by Team of Reviewers of the publication of the results of the peer review for Review Panel discussion and agreement</p> <ul style="list-style-type: none"> • Submission by Review Panel of the Final Report and the results of the peer review for publication, for adoption by EIOPA BoS. The publication of the results of the peer review is subject to Article 30(4) of the Regulation. • Publication of the results of the peer review
Follow-up	<ul style="list-style-type: none"> • Approval of follow-up project plan by EIOPA BoS • Actions to be taken as follow-up

The Review Panel

- 1.16. Based on the EIOPA BoS decision on the peer review topics documented in peer review project plans and follow-up project plans, and reflected in the Review Panel mandate, the Review Panel organises its work.
- 1.17. The Review Panel may develop further guidance on the application of the Methodology, including any necessary templates.

2. Preparatory Stage

Selection of the topic, including the scope, timeframe and resources needed by EIOPA BoS

- 2.1. When deciding on the topic and scope of peer review, including selection of specific provisions and supervisory practices for a specific peer review, the following, non-exhaustive factors are taken into account:
 - the provisions and supervisory practices are of relevance to a sufficient number of NCAs;
 - the supervisory practices are assessed both from a risk-based and forward looking perspective;
 - the importance of convergence in supervisory practices and supervisory outcomes;
 - the extent of the experience among supervisors in having applied the relevant provisions and practices;
 - the likelihood of the relevant provisions being subject to amendment as a result of legislative / regulatory developments in the near future; and
 - whether the peer review of the relevant provisions and practices may inform legislative / regulatory developments.

- 2.2. The Review Panel agrees on the peer review project plan and presents it for EIOPA BoS approval, describing the topic, rationale, scope, timeline, resources needed, risks to the project and links to other relevant EIOPA work.
- 2.3. The scope of peer review describes the EU measures to be assessed (if any) and approach to assessment criteria.

Nomination of experts to join the Team of Reviewers and nomination of a Leader to coordinate the work of the Team of Reviewers

General Principles applying to establishment of Team of Reviewers

- 2.4. For each peer review, the Review Panel Chair invites NCAs and EIOPA to nominate experts to join or lead the Team of Reviewers. Nominated experts may also be Members of the Review Panel. The Team of Reviewers comprises experts having sufficient knowledge and expertise in respect of the provisions and supervisory practices under review, and if possible experience in peer reviews. The number of reviewers is determined taking into account the specificities of the peer review.
- 2.5. All NCAs are expected to contribute regularly over time to providing experts for the Teams of Reviewers, taking due account of their respective resource capacity.
- 2.6. The NCAs and EIOPA ensure that the nominated experts are able to allocate sufficient time to actively and substantially contribute to the whole peer review process, from the drafting of the ToR and self-assessment questionnaire to Final Report.
- 2.7. The Review Panel decides on the composition of the Team of Reviewers for each peer review, including the Leader of the Team of Reviewers, based on the nominations received. Due consideration is given to the need to achieve appropriate geographical balance within the Team of Reviewers.
- 2.8. The members of the Team of Reviewers act independently when participating in a peer review in order to warrant a neutral and objective assessment.

Tasks of the members of the Team of Reviewers

- 2.9. The tasks of the members of the Team of Reviewers are to:
 - participate in meetings of the Team of Reviewers and (where necessary) the Review Panel;
 - prepare the ToR and self-assessment questionnaire;
 - analyse responses to the self-assessment questionnaire received from NCAs, identify issues for further exploration and determine whether additional information is necessary and should be requested from the NCA;
 - participate in drafting the report on initial findings;
 - participate in the field work activities;
 - contribute to the development of the Final Report;
 - participate in drafting the Evaluation Letters;

- draft Final Report;
- participate in the subsequent revision of the draft Final Report based on feedback received from the Heads of NCAs to the Evaluation Letters; and
- participate in the follow-up phase, where possible.

Tasks of the Leader of the Team of Reviewers

2.10. In addition to the requirements applying to all members of the Team of Reviewers, the Leader has organisational and leadership skills.

2.11. The tasks of the Leader are to:

- organise the peer review process, including planning and distribution of tasks;
- ensure timely delivery of ToR, self-assessment questionnaire, priorities and means of field work, Evaluation Letters and Final Report;
- ensure peer reviews are conducted in accordance with the methodology;
- liaise with the Review Panel Chair and escalate any issues;
- report to the Review Panel at each stage of the peer review (including attending meetings of the Review Panel when necessary); and
- cooperate with responsible EIOPA Staff.

Tasks of responsible EIOPA Staff

2.12. The responsible EIOPA Staff provides support to the Review Panel in fulfilling its mandate, in accordance with Article 13 of the Rules of procedure for EIOPA's Working Groups (EIOPA-BoS-14/135), taking into account the specificities of Peer Reviews, and contributes to the work of the Team of Reviewers through:

- executing the Review Panel's programme management, including providing an overview to the Review Panel Chair of the status, risks and progress of all peer reviews in the Review Panel mandate, while liaising with the Leaders of the Teams of Reviewers;
- ensuring the members of the Team of Reviewers are provided with adequate training on the peer review procedures;
- ensuring a consistent approach across peer reviews in accordance with the Methodology;
- organising field work (visits, conference calls or written procedures);
- providing advice on project management and technical issues; and
- providing analytical support (on request) to the Team of Reviewers.

Drafting of Terms of Reference by Team of Reviewers and approval by the Review Panel

- 2.13. The ToR are based on the peer review project plan approved by the EIOPA BoS. The ToR describe in detail the purpose and the scope of the particular peer review, the reference period, timeline, assessment criteria and expected outcomes.
- 2.14. For each peer review a reference period is set to provide for an appropriate time period for assessing the application of EU measures and where no EU measures are in place, the assessment of supervisory practices more generally, in addition to the outcomes achieved. Where appropriate, within one project, the reference period could differ.
- 2.15. The ToR are approved by the Review Panel.

Use of Existing Information

- 2.16. The Review Panel decides on the use of existing information taking into account factors such as:
- the source and scope of the information or evaluation;
 - the topic to which the information or evaluation relates;
 - when the information or evaluation was prepared; and
 - the timeframe to which it relates.

Drafting of self-assessment questionnaire by Team of Reviewers, testing of draft self-assessment questionnaire and approval of self-assessment questionnaire by the Review Panel

- 2.17. While developing the ToR, the Team of Reviewers, under the steering of the Review Panel, develops in parallel the draft self-assessment questionnaire, in line with the draft ToR.
- 2.18. Based on the approach described in the peer review project plan, the assessment criteria are set to provide for a common understanding of expected supervisory approaches and outcomes. The assessment criteria may be based on a grading system, as appropriate.
- 2.19. The assessment criteria refer to provisions in EU measures, which supervisors are required to apply in order to set out the expectations in a clear and transparent manner. The self-assessment questionnaire explains any hypothesis taken by the Review Panel in developing the assessment criteria.

2.20. Self-assessment questions:

- are in line with the ToR;
- reflect the assessment criteria;
- are limited to information necessary for the purposes of the peer review; and
- aim to facilitate the Team of Reviewers understanding of how EU measures have been applied by the NCAs and EIOPA, where relevant.

2.21. The self-assessment questionnaire may consist of closed questions requiring a 'yes', 'no', 'not applicable' or 'no cases' response, open questions or statistical data requests.

2.22. In order to support or further explain the responses, NCAs or EIOPA, where appropriate, may be asked to provide additional information (e.g. summaries of relevant national measures).

2.23. The Review Panel provides steering during the development of the self-assessment questionnaire and agrees on a draft for testing.

2.24. The Review Panel invites relevant experts from NCAs and EIOPA who have not been involved in the drafting process to test the draft self-assessment questionnaire in order to ensure that questions are understandable and unambiguous.

2.25. The self-assessment questionnaire and the deadline for responding are approved by the Review Panel.

3. Self-Assessment

Launch of self-assessment questionnaire

3.1. The self-assessment questionnaire is sent to NCAs and (where appropriate) EIOPA, by the responsible member of EIOPA Staff. The self-assessment questionnaire where necessary will include instructions for completion.

Submission of responses by NCAs to the self-assessment questionnaire

3.2. NCAs provide responses to the self-assessment questionnaire within the deadline set by the Review Panel.

3.3. NCAs ensure that their responses to the self-assessment questionnaire are complete, accurate and supported by sufficient evidence.

3.4. If the peer review topic is not relevant to a NCA, the NCA should send a waiver application to the Review Panel Chair supported by sufficient evidence for not participating in the peer review within 2 weeks after the launch of the peer review.

- 3.5. Questions left unanswered (including a failure to respond to a request for additional information or clarification), or declining a peer review visit or conference call will be classified as 'not contributing' and may lead to a statement of non-contribution as regards the overall assessment.
- 3.6. NCAs ensure that a contact person is established for each peer review who is available through the whole peer review.
- 3.7. Answers to the self-assessment questionnaire are accessible for the Team of Reviewers and members of the Review Panel.
- 3.8. The respondents to the self-assessment questionnaire from NCAs should not be the same national expert as in the Team of Reviewers.

National measures

- 3.9. The NCA, when responding to the self-assessment questionnaire, provides the exact reference to, and summarises any relevant national measures and which demonstrate how the NCA would act in respect of the issues subject to peer review.
- 3.10. The term 'national measures' is interpreted broadly and may include national legislation or any other legally binding or non-legally binding measures (e.g. national guidelines, rules, principles, internal procedures or NCA handbooks).

4. Review by Peers

General Principles for the Review by Peers

- 4.1. The work of the Team of Reviewers is organised and allocated by the Leader of the Team of Reviewers.
- 4.2. The Team of Reviewers conducts all activities applying the four eyes principle.
- 4.3. The Team of Reviewers documents all relevant facts using standardised assessment templates in order to ensure an audit trail. The documents are stored on the EIOPA extranet in an area accessible to the Team of Reviewers.
- 4.4. The Team of Reviewers cooperates and communicates regularly in order to facilitate the analysis and ensure consistency of reviewers' work.
- 4.5. The members of the Team of Reviewers are not involved in reviews in respect of their NCA or jurisdiction and carry out the peer reviews in a neutral and objective manner. The review by peers is conducted for all NCAs simultaneously, in order to minimise the risk of uneven or biased results.

Comparative analysis, including any initial clarification of answers, and development of a draft Report on initial findings by the Team of Reviewers

- 4.6. The Team of Reviewers, based on the responses received to the self-assessment questionnaire, which are the primary source of information, conducts individual and comparative analyses. If necessary for this purpose, the Team of Reviewers may contact NCAs for initial, factual clarification of the NCAs' replies to the self-assessment questionnaire, on short notice. The peer review will proceed even in the absence of replies.
- 4.7. The assessment undertaken during a peer review must be comprehensive and in sufficient depth to allow a judgement on supervisory practices, taking into account the assessment criteria.
- 4.8. The assessment criteria can be met in various ways. They are not to be seen as a checklist approach to compliance but as a qualitative exercise. The process of assessing supervisory practices may require a judgemental weighing of numerous elements. As such, emphasis is placed on the commentary of the reviewer, which accompanies each grading, if applicable, rather than the grading itself.
- 4.9. The Team of Reviewers summarises the individual and comparative analysis into a draft report on initial findings, covering all NCAs participating in the peer review.

Proposal by Team of Reviewers on the Priorities and Means of Field Work followed by discussion and approval by Review Panel

- 4.10. On the basis of the draft report on the initial findings, the Team of Reviewers proposes the appropriate priorities and means of field work.
- 4.11. The purpose of the field work is to exchange supervisory experience and to explore, in additional depth, supervisory practices, in order to achieve a common understanding of supervisory practices and outcomes and facilitate the identification of best practices.
- 4.12. The field work supports the objective of a particular peer review, and is conducted within the boundaries of the ToR. It ensures equal treatment of NCAs under review and where relevant EIOPA. The benefits of conducting field work activity should outweigh the resources costs.
- 4.13. The priorities of field work describe the issues to be further addressed through the field work and define the focus of work.
- 4.14. The means of field work include visits to NCAs, conference calls or written procedures.

- 4.15. Criteria for determining the means of the field work activities to be conducted in respect of each NCA include:
- non-contribution of responses to the self-assessment questionnaire or information requested;
 - inconsistency or lack of clarity of responses provided in the self-assessment questionnaire;
 - potential extent of the misapplication of provisions in EU measures;
 - relevance of the issues subject to peer review for one or more NCAs or their markets;
 - extent of the experience in a particular area with a view to exploring any potential best practice; and
 - costs and resources available to the Team of Reviewers.
- 4.16. The Team of Reviewers proposes to the Review Panel for discussion and approval the priorities underpinning the field work and the means of field work to be employed in respect of each NCA.

Field work by the Team of Reviewers with Steering by Review Panel

- 4.17. The Team of Reviewers conducts the field work as agreed by the Review Panel.
- 4.18. The NCA under review ensures that the Team of Reviewers has access to all relevant documents requested.
- 4.19. The NCA under review ensures that NCA Staff with relevant expertise is available during the field work phase.
- 4.20. The Team of Reviewers ensures common understanding of the facts between the Team of Reviewers and the NCA under review.
- 4.21. Based on the field work, the Team of Reviewers discusses and summarises its findings and arrives at a common view on conclusions, including recommended actions and best practices.
- 4.22. During the field work phase, the Leader of the Team of Reviewers reports to the Review Panel on progress, initial findings and conclusions, including any potential recommended actions and best practices, and seeks the Review Panel's steering.

Submission by Team of Reviewers of the draft Final Report for approval by the Review Panel

- 4.23. After finalising the field work, the Team of Reviewers submits its conclusions, including recommended actions and best practices in the form of a draft Final Report to the Review Panel for discussion and approval. The draft Final Report may also identify relevant developments and improvements since the end of the reference period, but any such developments will not be subject to assessment, as will be stated in the draft Final Report.
- 4.24. The Review Panel may identify best practices which can facilitate the achievement of the objectives of the respective provisions or practices under review.

Evaluation Letters of the Review Panel Chair to Heads of NCAs

- 4.25. Based on the draft Final Report approved by the Review Panel, the Team of Reviewers drafts Evaluation Letters to the Heads of NCAs. The Evaluation Letters summarise the findings, including recommended actions with respect to the individual NCAs and supporting evidence.

Written responses by Heads of NCAs to the Evaluation Letters

- 4.26. Heads of NCAs, in their response to the Evaluation Letter, explain their position in relation to the factual findings and recommended actions proposed by the Review Panel.
- 4.27. After the analysis of responses from the Heads of NCAs to the Evaluation Letters, the Team of Reviewers prepares its position on the responses of NCAs to the recommended actions, for presentation to the Review Panel.
- 4.28. The Leader of the Team of Reviewers presents to the Review Panel, for discussion and approval, the proposal of the Team of Reviewers on how to address the responses of the NCAs to the recommended actions.

5. Final outcomes

Submission by Team of Reviewers of the draft final report for Review Panel discussions and agreement

- 5.1. The Team of Reviewers completes the draft Final Report and presents it to the Review Panel for discussion and agreement.
- 5.2. The discussion of the draft Final Report within the Review Panel represents a key element of the actual review by peers. All Review Panel Members actively participate in the discussion of the Final Report and have an open debate on the final outcomes of the peer review on factual basis.
- 5.3. The Review Panel discusses and agrees on the Final Report. In case a Head of a NCA, in the response to the Evaluation Letter, has expressed concerns about specific outcomes of the peer review relating to its own competent authority, this should not be a reason for the Review Panel Member representing this NCA for not agreeing to the Final Report.
- 5.4. On the basis of the decision of the Review Panel regarding the recommended actions, the Heads of the NCAs concerned are informed in writing by the Review Panel Chair of the relevant conclusions of the Review Panel.

Submission by the Review Panel of Final Report for adoption by the EIOPA BoS

- 5.5. After the Review Panel has agreed to the Final Report, it is submitted to the EIOPA BoS for adoption in accordance with Article 11 of the Decision establishing the Review Panel.
- 5.6. The submission of the Final Report by the Review Panel is accompanied by a cover note presenting the main outcomes and highlighting any significant difficulties encountered including, where relevant, proposals for messages to be published.
- 5.7. The EIOPA BoS may advise the Review Panel to amend the Final Report whenever deemed necessary, for example, if a dissenting opinion of a NCA is considered by the EIOPA BoS to be well founded or justified.

Publication of the results of the peer review

- 5.8. The Team of Reviewers presents to the Review Panel, for discussion and agreement, a draft version of the results of the peer review for publication, including the best practices and an overview of the recommended actions. This version, once agreed by the Review Panel, will be submitted to the EIOPA BoS for approval.
- 5.9. The results of the peer review shall, as a rule, be published in full on a named basis, subject to the agreement of the NCA concerned.
- 5.10. The publication may exclude certain information for confidentiality or sensitivity reasons.

- 5.11. A NCA that does not give its agreement to publication is expected to state the reasons for this. The reasons for omission of the NCA concerned shall be explained in the report.
- 5.12. NCAs that have strong objections to findings related to their supervisory practices or to recommended actions towards their authority have the right to submit a written statement. This statement shall be included as an annex to the publication of the report.

6. Follow-up

Approval of follow-up project plan by EIOPA BoS

- 6.1. The Review Panel prepares the peer review follow-up project plan describing scope, timeline, resources needed and risks to the project, for EIOPA BoS approval.
- 6.2. The general principles for peer reviews should apply to follow-up mutatis mutandis.
- 6.3. The follow-up is conducted by a team of experts on the particular topic, and ideally participating in the original peer review.

Actions to be taken as follow-up

- 6.4. A peer review follow-up will normally include the following steps.
- 6.5. Following the completion of a peer review, individual progress reports will be requested from the NCAs and EIOPA where relevant. Progress reports will be requested as long as recommended actions remain to be addressed. The frequency of the progress report may vary, taking into account the significance of the deficiencies identified during the peer review.
- 6.6. The progress reports include an update on whether the best practices identified in the peer review have inspired any developments in supervisory practices.
- 6.7. Based on the individual progress reports, the Review Panel develops a collective progress report that, on a named basis, identifies the progress made against the recommended actions. This report also draws the attention to any gaps e.g. in the EU legal framework or EIOPA guidelines or recurring weaknesses that impede their effectiveness in achieving desired supervisory outcomes.
- 6.8. The collective progress report is presented to the EIOPA BoS for information. The results of this follow-up may be published in accordance with paragraphs 5.8 to 5.12 above.
- 6.9. Other forms of follow-up action may be pursued where appropriate.