

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

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European Insurance and
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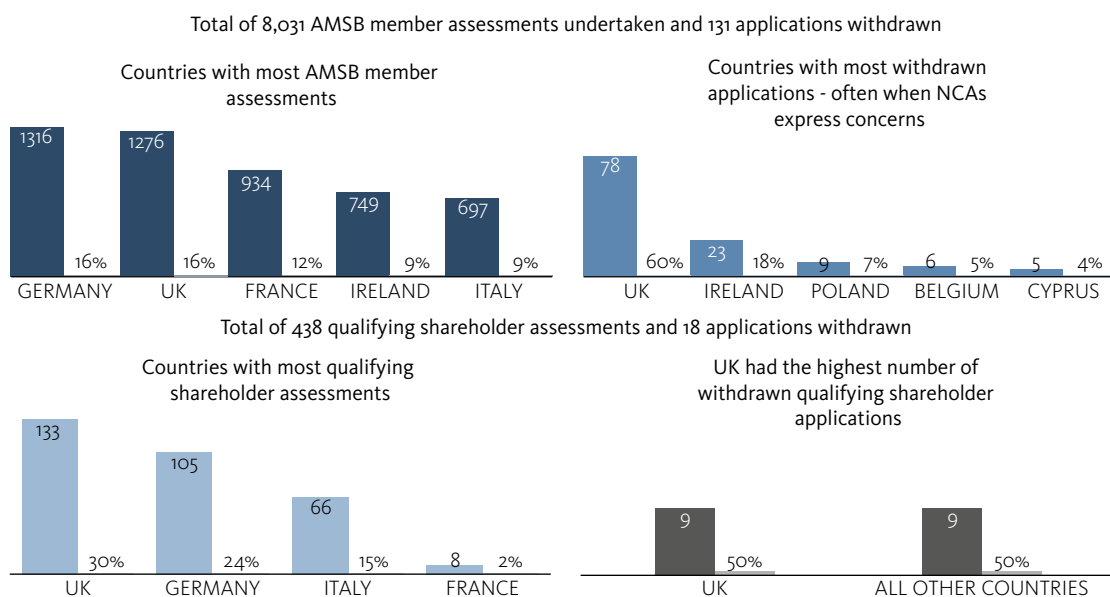
EXECUTIVE SUMMARY

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

BACKGROUND AND OBJECTIVES

The Solvency II framework requires that insurance and reinsurance undertakings ('insurers') are owned and run by persons of integrity and of good repute to ensure sound and proper management of insurers. The primary responsibility to ensure (fitness and) propriety of administrative, management or supervisory body (AMSB) members at all times rests with insurers, with national competent authorities (NCAs) carrying out their assessment following the assessment by insurers. Similarly, any acquisition of or changes to qualifying holdings are subject to review and approval by NCAs. During the reference period from 1 January 2016 to 15 May 2017, NCAs dedicated considerable resources to assess 8,031 AMSB applications and 131 changes to qualifying shareholders. The tables below provide an overview of the countries that assessed the most number of applications and countries with most number of applications withdrawn¹.

Statistical overview of propriety assessments



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

¹ Includes one change to qualifying shareholder application refused by IVASS, Italy.

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

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

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

PEER REVIEWS: AN ESSENTIAL OVERSIGHT TOOL

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

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

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

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

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

MAIN FINDINGS

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

OVERVIEW OF RISKS, FINDINGS AND RECOMMENDED ACTIONS

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

National legislation or regulatory framework

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

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

Area of recommended action	Authorities concerned
<p>These changes relate to either strengthening the scope of the propriety assessment or enhancing the NCAs' legal powers to take necessary actions in relation to AMSB members. For example, a number of regulatory frameworks do not provide for consideration of pending investigations of criminal offences, administrative sanctions or personal bankruptcy. Similarly, certain NCAs lack the power to assess non-executive AMSB members or take timely action in relation to AMSB members such as power to remove AMSB members when considered not proper. The shortcomings expose the NCAs to a less robust propriety assessment and expose the internal market to the risk of different outcomes across countries (e.g. person considered proper in one EEA country but not proper in another or improper person who can be removed in one country but not in another).</p>	<p>Financial and Capital Market Commission (Latvia), Croatian Financial Services Supervisory Agency (Croatia), Financial Supervision Authority (Estonia), Bank of Greece, Istituto per la Vigilanza sulle Assicurazioni (Italy, 2 recommended actions), Commissariat aux assurances (Luxembourg, 2 recommended actions), National Bank of Slovakia, Insurance Supervision Agency (Slovenia, 2 recommended actions), Dirección General de Seguros y Fondos de Pensiones (Spain)</p>
<h4>Propriety assessment questionnaires</h4>	
<p>Two recommended actions require two NCAs to include explicit questions in their questionnaires on specific elements of the 5 bases of propriety assessments</p>	
<p>The NCAs in Belgium and Poland need to amend their questionnaires to incorporate specific questions in relation to tax and consumer protection offences (Belgium), respectively, involvement in bankruptcies, AML, financial soundness of the applicant and doing business without a licence (Poland). Both countries already have the legal basis in place to consider the 5 bases of propriety assessments, however inclusion of explicit and specific questions in their questionnaires will strengthen their legal and regulatory frameworks.</p>	<p>National Bank of Belgium Komisja Nadzoru Finansowego (Poland)</p>

Ongoing assessment of propriety of qualifying shareholders and AMSB members

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

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

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

In relation to qualifying shareholders

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

In relation to AMSB members

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

Guidance and supervisory records

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

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

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

In relation to guidance

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

In relation to supervisory records

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

Follow up steps for EIOPA

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

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

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

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

Complex cross-border cases of propriety assessment

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

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

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

Strengthening of legal powers of NCAs

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

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

BEST PRACTICES

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

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

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

² The primary responsibility to make decisions continues to rest with the home NCA.

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

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

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

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

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

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

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

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

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

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

A well-structured framework includes:

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

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

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

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

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

IMPACT ON THE CREATION OF A COMMON SUPERVISORY CULTURE

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

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

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

CONCLUSIONS AND NEXT STEPS

EIOPA considers that the recommended actions will significantly strengthen the regulatory frameworks and supervisory practices in the area of (fit and) proper requirements across NCAs. From a supervisory convergence perspective, the implementation of recommended actions will promote effective and consistent supervision, build on a common interpretation of laws and regulations, and without prejudice to the application of supervisory judgment or the proportionality principle. The actions sought from the NCAs will assist them in delivering on the main objective of supervision³: the protection of policyholders and beneficiaries.

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

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

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

³ In accordance with Article 27 of the SII Directive.

1. SCOPE, METHODOLOGY AND APPROACH

1.1. SCOPE

In carrying out the peer review, EIOPA assessed:

- i. national regulatory frameworks;
- ii. the supervisory practices followed by NCAs to assess the propriety of AMSB members and of qualifying shareholders at solo and at group level, both at the moment of authorisation and on an ongoing basis; and
- iii. the effectiveness of the cross-border cooperation.

The peer review questionnaire was based on elements from recent cases where several NCAs were engaged in the assessment of propriety of AMSB members or qualifying shareholders.

The questionnaire was targeted to explore the following elements:	Structure of the peer review self-assessment questionnaire:
a. The criteria used for the propriety assessment.	A. Introductory questions
b. The transparency of the assessment criteria within the NCAs and for the applicants.	B. Legal and regulatory framework
c. The quality of the assessments especially the sources of information used for the propriety assessment.	C. Practical process of the propriety assessment
d. The scope of the propriety assessment, particularly in cases where insurers are owned by or have shareholders who are part of a complex (international) group structure.	C.1. Description of the process
e. The consequences of the propriety assessment and final decision: approval, refusal or withdrawal.	C.2. Sources of information
f. How supervisory records involving propriety assessments were maintained and updated in order to ensure that supervisory records or databases are an up to date source of information for future assessments or cross-border cooperation.	C.3. Questions on qualifying shareholders
g. Cooperation in propriety assessments among NCAs.	C.4. Questions on groups
	C.5. Cross-border cooperation
	C.5.1. Cooperation with EEA authorities
	C.5.2. Cooperation with Non-EEA authorities
	C.6. Consequences of the person not being assessed as proper

1.2. METHODOLOGY AND APPROACH

The peer review was conducted on the basis of EIOPA's Methodology for conducting Peer Reviews. The proposed best practices and recommended actions are based on the answers to the self-assessment, and the field work by the reviewers and the responses to the evaluation letters.

In conducting the peer review, EIOPA used evidence from the self-assessments provided by NCAs as well as information and evidence gathered during the fieldwork.

The self-assessments provided by NCAs were collected via a questionnaire that was sent to all NCAs in EEA countries by email with a deadline of 15 May 2017.

From July to October 2017 the reviewers conducted the **field work**.

Visits were organised to 10 NCAs and conference calls with 21 NCAs were held.⁴ The focus of the field work was to get a better understanding of the supervisory practices of NCAs, so the reviewers especially asked for (details on) concrete cases.

Regarding best practices (see Annex 1), the reviewers assessed information collected during the field work, using the following criteria as mentioned in the Methodology for conducting Peer Reviews:

- › supervisory objectives
- › quality of tools/outcomes
- › risk-based
- › proportionality
- › forward looking
- › sustainable
- › supervisory transparency and accountability
- › supervisory cooperation and exchange of information.

⁴ The means of field work were decided according to paragraph 4.15 of the 'Methodology for conducting Peer Reviews'.

COUNTRIES ASSESSED

The table below includes the list of countries participating in the Peer Review, as well as the corresponding acronym which is also used in this report.

AT	Austria	FR	France	NL	Netherlands
BE	Belgium	HR	Croatia	NO	Norway
BG	Bulgaria	HU	Hungary	PL	Poland
CY	Cyprus	IE	Ireland	PT	Portugal
CZ	Czech Republic	IS	Iceland	RO	Romania
DE	Germany	IT	Italy	SE	Sweden
DK	Denmark	LI	Lichtenstein	SI	Slovenia
EE	Estonia	LT	Lithuania	SK	Slovakia
EL	Greece	LU	Luxembourg	UK	United Kingdom
ES	Spain	LV	Latvia		
FI	Finland	MT	Malta		

OTHER ABBREVIATIONS AND ACRONYMS USED

The table below includes the acronyms used in this report.

3L3 guidelines	Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (CEBS/2008/214, CEIOPS-3L3-19/08, CESR/08-543b)
AMSB	Administrative, management or supervisory body
Delegated Regulation	Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
EBA	European Banking Authority
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EIOPA SoG guidelines	EIOPA Guidelines on system of governance (EIOPA-BoS-14/253)
ESMA	European Securities and Markets Authority
European guidelines	Collectively reference to the EIOPA SoG guidelines including technical annex, 3L3 guidelines or the joint guidelines
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
General Protocol	General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union (CEIOPS-DOC-07/08)
IAIS	International Association of Insurance Supervisors
ICP	Insurance Core Principle

Joint guidelines	Joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01)
NCA(s)	National competent authority(ies)
SII Directive	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

1.3. REFERENCE PERIOD

For each peer review a reference period is set to provide for an appropriate time period for assessing the application of EU measures. For this peer review, the reference period was from 1 January 2016 to 15 May 2017.

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

1.4. ASSESSMENT CRITERIA

In a peer review the assessment criteria are set to provide for a common understanding of expected supervisory approaches and outcomes. The assessment criteria for this peer review are summarised below. The respective legal references from the assessment criteria correspond to specific questions in the self-assessment questionnaire. The assessment criteria are grouped in line with the sections of the questionnaire.

Section of the questionnaire	Assessment criteria applied
A. Introductory questions	Article 31(1) of the SII Directive Article 30(2)b of the EIOPA Regulation
B. Legal and regulatory Framework	Article 31(1) of the SII Directive, Articles 26(3) and 29(1) of the SII Directive Articles 41 of the SII Directive Article 30(2)b of the EIOPA Regulation 3L3 guidelines, Articles 1.45, 1.49, 13 - 15 of the EIOPA SoG guidelines (EIOPA_BoS_14/253)
C. Practical process of the propriety assessment	

Section of the questionnaire	Assessment criteria applied
C.1. Description of the process	Article 34, 36 and 42 of the SII Directive Articles 26(3) and 29(1) of the SII Directive 3L3 guidelines - Articles 23-38 Article 273 of the Delegated Regulation (EU) 2015/35 and General Protocol*, Part II, art 4.1 and 4.2 Paragraphs 1.45, 1.49, 13 - 15 of the EIOPA SoG guidelines and the technical annex to the SoG guidelines
C.2. Sources of information	Articles 34 and 42 of the SII Directive Article 273 (4) of the Delegated Regulation (EU) 2015/35
C.3. Questions on qualifying shareholders	Article 59 of the SII Directive 3L3 guidelines, page 10- 16, appendix 2, particularly pages 33 -36
C.4. Questions on groups	Article 257 of the SII Directive
C.5. Cross-border cooperation	Article 42 of the SII Directive for AMSB, Article 24, 26(3) and 59 of the SII Directive for qualifying shareholders, Article 34 of the SII Directive for general supervisory powers
C.5.1. Cooperation with EEA authorities	General Protocol, Part II, Paragraphs 4.1 to 4.3 General Protocol, Part II, Paragraphs 6.1 to 6.3
C.5.2. Cooperation with non-EEA Authorities	Articles 34 and 42 of the SII Directive and IAIS** Insurance Core Principle 5
C.6. Consequences of the person not being assessed as proper	No assessment criteria specified

* The General Protocol has been replaced by the Decision on the collaboration of the insurance supervisory authorities, 30 January 2017.

** IAIS refers to International Association of Insurance Supervisors.

TEAM OF REVIEWERS

The Team of Reviewers was led by the Central Bank of Ireland.

Members of the team of reviewers were from Belgium, the Czech Republic, France, Ireland, Italy, the Netherlands, Slovenia and EIOPA.

2. LEGAL AND REGULATORY FRAMEWORKS

2.1. NOTION OF PROPRIETY

The assessment of whether a person is proper for the appointment or continued membership of an AMSB or suitable for acquiring a qualifying shareholding includes an assessment of that person's character, personal behaviour and business conduct including any relevant criminal, financial and supervisory aspects. Detailed criteria for the propriety of AMSB members or propriety of qualifying shareholders are contained within the relevant guidelines (i.e. EIOPA SoG guidelines including technical annex, 3L3 guidelines or the joint guidelines, hereinafter collectively referred to as the European guidelines). These European guidelines⁵ detail the following five bases for definition or scope of the assessment for insurers as well as for NCAs:

1. criminal offences and administrative sanctions for non-compliance with provisions governing financial activities;
2. pending investigations for criminal offences or administrative sanctions;
3. bankruptcy or insolvency of an insurer where the candidate was previously a director;
4. personal bankruptcy or inclusion on a list of unreliable debtors; and
5. matters of transparency or honesty, rejection of an application, exclusion or limitation to conduct operations which requires authorisation or dismissal from employment.

A narrow definition or scope of the propriety assessment not encompassing all five bases is likely to result in a less robust assessment that does not meet the requirements of Articles 42 and 59 of the SII Directive when read with the detailed criteria provided in the European guidelines. From a European supervisory convergence perspective, a narrow definition in one country is likely to undermine

⁵ See the guidelines and particularly the technical annex to the EIOPA SoG guidelines, Appendix II to the 3L3 guidelines and Annex I to the joint guidelines.

the prior consultation process envisaged by Article 26 and result in the risk of different outcomes in different countries in relation to the same AMSB member or qualifying shareholder. The aspects listed above are not an exhaustive list but forms the basis of minimum information that should be considered in (fitness and) propriety assessments.

A summary of recommended actions issued on the basis of '5 bases of propriety' is provided below:

Factors of propriety	NCAs receiving the recommended action
1. Conviction of a criminal and administrative offence	None
2. Ongoing prosecutions and pending investigations for a criminal or administrative offence	6 (EE, EL, IT, LU, LV, SI)
3. Situations relating to the past and present business performance of the concerned candidate (bankruptcy, etc.)	2 (EE, LV)
4. Situations relating to the past and present financial soundness of the concerned candidate (personal bankruptcy, etc.)	6 (EE, HR, IT, LU, LV, SI)
5. Situations relating to the absence of transparency or honesty in past or present business	5 (EE, LU, LV, IT, SI)

Belgium and Poland need to amend their questionnaires to incorporate specific questions in relation to: tax and consumer protection offences (Belgium), involvement in bankruptcies, AML, financial soundness of the applicant and doing business without a licence (Poland).

Both countries already have the legal basis in place to consider the 5 bases of propriety assessments, however inclusion of explicit and specific questions in their questionnaires would strengthen their legal and regulatory framework.

CASE STUDY 1:



DIVERGENT ASSESSMENT CRITERIA IN COUNTRIES RESULTING IN REGULATORY ARBITRAGE

A natural person (person Z) is the majority shareholder of a group with a holding company that has several subsidiaries in country A. One of the companies in which person Z is involved applies for a licence for financial business in country A. The NCA of country A refuses the licence for various reasons including offering financial products without a licence, being involved in doubtful financial transactions, being active in financial entities which experienced severe financial difficulties and for alleged involvement in money laundering transactions. The company of person Z cannot operate in country A in the financial sector.

Meanwhile person Z also starts an insurance business in country B as majority shareholder and Board member and applies for a licence, planning to offer products similar to those planned to offer in country A, in the form of insurance products and via freedom of services from country B into country A.

The licencing department of the NCA of country B requests information in relation to person Z from the NCA in country A. The information on the doubtful financial business as well as the at that point in time still pending licencing case are reported. For the NCA of country B the information does not provide sufficient legal basis to refuse the licence. A licence in country B is therefore granted as well as an approval for freedom of services for all EEA countries.

After the NCA of country A refuses to grant the licence in country A, this decision is also shared with the NCA of country B. Separate to the granting of the license, a reassessment of Z's fitness and propriety is initiated by the NCA of country B. The decision of the NCA in country A is in relation to the financial entity where Z is the majority shareholder. The involvement in other doubtful financial business was according to NCA B also related to the financial entities where Z is involved as shareholder and provides insufficient evidence to consider Z not proper as a person. As a result the licenced insurer of Z in country B can continue to offer its products via freedom of services.

However, the fact that important new information was provided by the NCA of country A to the NCA of country B has led to a request from EIOPA to the NCA of the country B to reassess the propriety of Z.

How did the peer review address the issues found in this case study?

The main issue in this case study is lack of harmonisation of definition or scope of propriety assessment. EIOPA has recommended to seven NCAs to seek legislative or regulatory changes to bring the national legal and regulatory framework in line with the European requirements. The implementation of recommended actions will enhance harmonisation in the area of propriety assessment and eliminate the regulatory arbitrage. In section 4 this report touches upon the cases of potential supervisory arbitrage.

Generally, there is a better compliance with the definition or scope of propriety for qualifying shareholders due to the fact that the majority of the NCAs complied with the 3L3 guidelines during the reference period.

In relation to the definition of propriety of AMSB members, the two most problematic factors are lack of consideration of ongoing prosecutions and pending investigations, and bankruptcy and financial soundness.

2.2. ONGOING PROSECUTIONS AND PENDING INVESTIGATIONS

There appears to be significant variation with respect to whether and when to consider ongoing prosecution and pending investigations for criminal and administrative offences. Some NCAs take the view that ongoing prosecutions and pending investigations cannot be considered while assessing propriety. This view would appear to be

contrary to the requirements of Article 273 of the Delegated Regulation which requires assessment based on evidence – rather than conviction or final judgement in the matter – relating to criminal, financial and supervisory aspects relevant for the purpose of the assessment. The EIOPA SoG guidelines, when read with their technical annex, require pending criminal proceedings, bankruptcies, dismissal of employment and supervisory sanctions against the person or the insurer where the person had a key function to be taken into account.

When NCAs wait for closure of a pending investigation or suspicion from a court of law, the completion of legal or administrative proceedings may take a long time. Practical challenges may also exist, where the NCA responsible for initiating legal or administrative proceedings against the person decides not to pursue the case or delay the initiation of the proceedings due to lack of resources, prioritisation of resources elsewhere or for other procedural reasons. Until the matter is closed, the insurer employing the person and the supervisory authority will be exposed to a risk of allowing a potentially not proper person to work. The existence of ongoing prosecutions or pending investigations does not necessarily result in an automatic refusal or NCAs assuming the role of a judicial court or administrative tribunal. The existence of ongoing prosecutions or pending investigations should serve as a trigger for heightening scepticism, deciding on whether the pending investigation or suspicion is relevant to the propriety assessment and, if so, reviewing the evidence available to reach a reasonable conclusion, refusal or approval.

NCAs should therefore always require the candidates and insurers to inform them of all pending legal proceedings at the time of application or notification, or at the start of such proceedings. A minimum set of information should be required from the candidate, the insurer and/or the prosecution authority. Based on all the relevant information available, NCAs should assess the materiality of the facts and their impact on the reputation of the candidate and the supervised insurer.

2.3. BANKRUPTCY AND FINANCIAL SOUNDNESS

When assessing AMSB members, a number of NCAs do not formally, in practice, take into account situations relating to past and present financial soundness of the concerned candidate such as personal bankruptcy or inclusion on a list of unreliable debtors.

Article 273 of the Delegated Regulation requires assessment based on evidence of personal behaviours and business conduct including the relevant financial aspects of the candidate. If a person has been subject of a personal bankruptcy, NCAs should analyse the underlying circumstances of the situation. NCAs should therefore always require the candidates and insurers to inform them of all situations such as personal bankruptcy or inclusion on a list of unreliable debtors. Information in relation to personal bankruptcies or equivalent should form part of the minimum set of information required by NCAs from candidates and insurers.

2.4. ROLE OF SUPERVISORY GUIDANCE: EXTERNAL AND INTERNAL

2.4.1. EXTERNAL GUIDANCE

External guidance assists NCAs to elaborate on the details of (fitness and) propriety criteria, sources to be consulted for propriety assessments and the process to be followed. The guidance, when issued, assists NCAs to conduct their tasks in a transparent and accountable manner as required by Article 31 of the SII Directive. The guidance also serves as a source to reiterate the primary responsibility of insurers and qualifying shareholders to ensure ongoing compliance with propriety requirements, consistent with Articles 42 and 59 of the SII Directive. External guidance often provides reporting templates for application forms and notification of material subsequent changes to the NCAs.

A significant number of NCAs have issued supervisory guidance in relation to propriety assessment (as part of fitness and propriety guidance) of AMSB members and key functions as well as propriety and financial soundness of proposed acquirers and persons of significant influence in a proposed acquisition. Some NCAs have not issued any guidance as, in their view, the national insurance legislation is sufficiently detailed for propriety assessment of AMSB members and the availability of 3L3 guidelines for qualifying shareholders did not warrant issuance of additional guidance. EIOPA has considered the NCAs' perspective and also took the comprehensiveness of the relevant insurance legislation into account. For propriety assessment of qualifying shareholders, focus was on the application of the 3L3 guidelines.

Recommended actions are addressed to the following NCAs as neither they have issued guidance nor is their national legislation sufficiently detailed to overcome the need for issuing guidance:

AMSB members	Qualifying shareholders
EE, FI, IT, LU, LV, SE	DE, DK, EE, SE

2.4.2. INTERNAL GUIDANCE

The objective of internal guidance is to achieve consistent outcomes by identifying a manner and form in which a risk-based and proportionate approach to supervision is achieved. Internal guidance translates the obligation imposed by Articles 29 and 59 of the SII Directive into supervisory roles, responsibilities and tasks and incorporates accountability into the supervisory process. The absence of internal guidance leaves the supervisory process less transparent and accountable and more dependent on the knowledge and understanding of certain employees involved in the process. A summary of NCAs receiving a recommended action for issuing an internal guidance or procedure is as follows:

AMSB members	Qualifying shareholders
BG, CZ, EE, LU, PT	BG, EE, LU, PT

2.5. NON-EXECUTIVE AND LEGAL PERSON AS AMSB MEMBERS

2.5.1. NON-EXECUTIVE AMSB MEMBERS

The scope of the propriety assessment according to Article 42 of the SII Directive should include all members of the AMSB i.e. members that hold a management function (executive directors) and a supervisory function (non-executive directors). The term ‘persons who effectively run the insurer’ used in Articles 42 and 257 of the SII Directive is a broad term covering all key persons for insurers, and includes at a minimum the AMSB members and other senior managers as explained by paragraphs 1.21 and 11.6 of the EIOPA SoG guidelines.

EIOPA observed that, in practice, all NCAs assess the propriety of both executive and non-executive AMSB members except for one NCA (Slovakia) which does not have the legal power to assess non-executive AMSB or

supervisory board members. The limitation in this case has resulted in a recommended action. As the same criteria apply to executive and non-executive AMSB members the information obtained concerning propriety should be the same for all AMSB members. Recommended actions are addressed to two countries (Luxembourg and Slovenia) applying, in practice, different assessment criteria between executive and non-executive AMSB members.

As regards the NCAs’ decision-making process used for assessing executive and non-executive AMSB members, it has been observed that two systems co-exist. Some NCAs follow the same assessment process for both executive and non-executive AMSB members i.e. either ex-ante or ex-post (for further details see section 2.6 below) while other NCAs apply a different decision-making process for executives and non-executive AMSB members. Generally, the executive AMSB members are subject to an ex-ante approval process and the non-executive AMSB members to an ex-post approval. Four NCAs apply a different decision making process for executive and non-executive AMSB members (Croatia, Luxembourg, Slovenia, Slovakia). The focus of EIOPA during the peer review was, however, to assess whether the executive and non-executive AMSB members are subject to the same assessment criteria rather than the same decision-making process, i.e. ex-ante or ex-post decision making process.

2.5.2. LEGAL PERSONS AS AMSB MEMBERS

The legislative frameworks in 7 countries (Bulgaria, Czech Republic, France, Lithuania, Luxembourg, Portugal, Spain) accept both natural persons and legal persons as AMSB members. Legal AMSB members are represented by a natural person and the natural persons are subject to propriety assessment. In Portugal, although only the natural person is registered, both the legal and the natural person are subject to propriety assessment by the NCA.

2.6. EX-ANTE AND EX-POST APPROVAL OF AMSB MEMBERS

EIOPA noted different approaches of how the NCAs conclude their assessment procedure for AMSB members:

- some NCAs perform the assessment of AMSB members before their appointment (*ex-ante* assessment) and only after their approval the AMSB members may perform their function.

- some NCAs perform their assessment after the notification of the appointment and the AMSB members may perform their functions when appointed by the insurer (*ex-post* assessment).
- some NCAs use a combination of both approaches (combined approach).

There are also differences as regards the way the NCAs communicate their assessment. Independently of the approach used, some NCAs communicate their decision explicitly in writing, both in case of approval and refusal. For others silence means no objection.⁶ Some NCAs foresee that the *ex-ante* approval or the *ex-post* notification is required only for executive AMSB members.

Summary of the approaches followed by NCAs:

NCAs using <i>ex-ante</i> assessment	NCAs using <i>ex-post</i> assessment	NCAs using <i>ex-ante</i> and <i>ex-post</i> assessment
BE, BG, HU, IE, LI, NL, MT, PT, RO, UK	AT, CY, CZ, DE, DK, EL, ES, FI, IT, IS, LV, NO, SI	EE, FR, HR, FR, LU, SE, PL, SK

The *ex-ante* approach is a robust *gate keeper* practice that allows an NCA to be certain that no person is employed until considered proper. It is an effective and efficient practice that allows the NCAs to stop persons from en-

tering the system without having to carry out in-depth investigation and potential legal proceedings. The *ex-post* approach allows quicker appointment procedures, more certainty for insurers in conducting their business (predictability) and the option to replace members as soon as possible, e.g. in case of unexpected vacancies. Under the *ex-post* approach, the NCAs make their assessment after the notification by insurers and if the NCAs do not assess the person as proper they inform the insurers who have the obligation to replace the person.

EIOPA did not favour any of the two approaches as a better practice. EIOPA noted, however, that not all the NCAs using an *ex-post* approach have the legal power to directly remove an AMSB member. Article 34 of the SII Directive states that *‘The supervisory authorities shall have the power to take any necessary measures, including where appropriate, those of an administrative and financial nature, with regard to insurance and reinsurance undertaking, and the members of the administrative, management or supervisory body.’*

EIOPA underlines that the primary responsibility of assessing (fitness and) propriety is with the insurers consistent with Article 42 of the SII Directive.

Recommended actions are addressed to those 3 NCAs (Italy, Slovenia, Spain) with no legal power to remove an AMSB member, to seek legislative changes to strengthen their powers.

⁶ As is envisaged by paragraph 2.68 of the Final Report on Public Consultation No. 14/017 on EIOPA guidelines on system of governance dated 28 January 2015.

CASE STUDY 2



LACK OF POWERS TO REMOVE AN AMSB MEMBER

Ability to directly remove a person is a pre-condition for an effective (fitness and) propriety framework.

An NCA in the EEA follows the ex-post system of silent no-objection and appointed persons take up their roles before the NCA's assessment is completed. Person Z had breached certain rules and was not removed by the insurer. The NCA identified the breach of the rules and reported the matter to the judicial authorities as it does not have the power to directly remove person Z.

If person Z would join another insurer within the same country, as an AMSB member, the NCA would discuss its concerns with the management body of this insurer in order for the management body not to accept the

person as proper. However, in case the management body of this insurer would refuse to remove the concerned person, the NCA could not take a direct action against person Z as it lacks effective powers to remove persons considered not proper.

How did the peer review address the issues found in this case study?

EIOPA has recommended to three NCAs to seek legislative changes to bring the national legal and regulatory frameworks in line with the European requirements. The implementation of recommended actions will strengthen the legal powers of the NCAs to take timely action.

3. SUPERVISORY PROCESSES OF THE PROPRIETY ASSESSMENT

3.1. FUNDAMENTALS OF THE PROCESS

The form and structure of key aspects of the assessment process vary significantly across NCAs. Some examples include processes where not all NCAs:

- impose a requirement on insurers to monitor propriety on an ongoing basis.
- carried out ad-hoc or triggered assessment or an ongoing assessment during the reference period.
- have prescribed a timeframe for reassessment of propriety.
- receive and consider the assessment of the insurers as part of the application package.

The nature and form of processes are not explicitly prescribed by the SII Directive or the Delegated Regulation. However, the propriety requirements need to be met at all times and well established processes result in efficiency and effectiveness in propriety assessments and consistency in outcomes.

3.2. DEADLINES FOR THE NOTIFICATION AND DECISION BY NCAs

The procedure and the timing for the assessment of qualifying shareholders are similar from one NCA to the other due to the fact that the procedure is harmonised by the 3L3 or the joint guidelines.

Concerning the supervisory process for the propriety assessment of AMSB members, EIOPA noted that, in addition to the existence of two systems of decision making process (ex-ante and ex-post), there are also heterogeneous deadlines between NCAs for both (i) the appointment

notification and (ii) the final decision by the NCA. Some NCAs are subject to strict deadlines while other NCAs do not have a deadline. EIOPA did not consider that the differences in deadlines had any practical implications for propriety assessment, therefore, no further recommendations are being made in this respect.

EIOPA observed that one NCA (Liechtenstein) has the right to suspend or put on hold its (fitness and) propriety assessment if new elements occur (e.g. initiation of judicial proceedings).

3.3. INITIAL, AD-HOC AND ONGOING ASSESSMENTS

Article 29 of the SII Directive requires that supervision by an NCA shall be based on a prospective and risk-based approach on a proportionate basis. The SII Directive requires supervision to be carried out on an ongoing basis. To this end, the NCAs' propriety assessments can be broken down into the following three categories:

- i. Initial assessment at the time of appointment
The initial assessment of AMSB members as well as qualifying shareholders take place in almost all cases.
- ii. Ad-hoc assessment
Ad-hoc or triggered assessment takes place when an NCA comes across new information in relation to an AMSB member or qualifying shareholder. Often this ad-hoc assessment is initiated by insurers who bring the new information to the attention of the NCAs. This ad-hoc or triggered assessment is in place in all countries.
- iii. Ongoing assessment
This refers to a proactive approach by insurers and NCAs to ensure that AMSB members and qualifying shareholders continue to meet the propriety requirements and there does not exist any evidence

that suggests otherwise. The ongoing assessment of AMSB members and qualifying shareholders is considered in more detail as follows.

Ongoing assessment, risk-based and proportionality requirements in the SII Directive complement each other. An application of one of these principles does not overrule the application of other principles. For example, Article 29 of the SII Directive, in stipulating the '**General principles of supervision**', states that:

'1. Supervision shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis [i.e. ongoing assessment] of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.

2...

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.'

Overall, the principles go hand in hand with each other. In particular reference to qualifying shareholders, the concept of proportionality and the manner in which it should be applied is discussed in detail in paragraph '**8. Proportionality principle**' of the joint guidelines. The implementation of the recommended action in relation to ongoing assessment should be proportionate, and consistent with the guidance available within the joint guidelines including the specific guidance for assessment of reputation contained in paragraph 8.3.

CASE STUDY 3



AD-HOC OR TRIGGERED ASSESSMENT ON FOOT OF NEW INFORMATION

Person Z was the non-executive chairperson of the board of a financial institution under supervision of an NCA. This was not an insurer. In addition, person Z held further positions as member/chairperson of several boards (among those person Z was member of the board of an insurer under supervision of the NCA).

A communication from the NCA to a supervised undertaking was forwarded to its shareholder in an edited form, thus, misinforming the shareholders. Person Z was the instigator of this editing. The NCA held interviews with person Z and the persons who reported this incident where it was proved that there was sufficient information to start an ad-hoc or triggered (fit and) proper assessment of person Z as the propriety of person Z was no longer beyond doubt. This resulted in person Z stepping down from all the

positions in financial institutions (also his position at the insurer) that were under supervision of the NCA.

How did the peer review address the issues found in this case study?

The case study highlights that circumstances relating to propriety can materially change even in cases of persons who have undergone (fit and) proper assessments multiple times. The case study also emphasises the importance of ongoing assessment of fit and proper assessments, in this case an ad-hoc assessment. Annex 3 outlines some further examples of how an ongoing propriety assessment of AMSB members and qualifying shareholders can be implemented by using a risk-based and proportionate approach and without replicating the process used for initial or ad-hoc assessments.

3.4. ONGOING ASSESSMENT OF AMSB MEMBERS

3.4.1. ONGOING ASSESSMENT BY INSURERS

The (fit and) proper requirements, as contained in Article 42 of the SII Directive and which form part of the *system of governance* requirements of the SII Directive, must be complied with *at all times* and the compliance with the requirements be subject to *regular internal review* ('ongoing assessment') by the insurers. Paragraph 1.45 of EIOPA's SoG guidelines also calls for assessing (fitness and) propriety on an ongoing basis.

The ongoing propriety of all AMSB members is crucial for the proper functioning of insurers. Insurers are required to put in place policies and procedures to ensure compliance with (fit and) proper requirements at all times. The most common form of ongoing assessment by insurers is a periodic reassessment of AMSB members. In this respect, the frequency of periodic reassessment is normally determined in the insurers' (fit and) proper policy. This frequency can be annual, every two years or another time interval. Some NCAs (for example, Ireland and Italy) require insurers to perform annual reassessments.

3.4.2. ONGOING ASSESSMENT BY NCAS

The compliance with the ongoing assessment requirement should be subject to supervisory examination in accordance with Article 29 and other related provisions of the SII Directive. The ongoing assessment involves proactive engagement resulting from the NCAs' own initiative, as part of its supervisory activities, rather than waiting for new evidence or facts. It should be clear from the supervisory process that the NCA also takes action on its own initiative and not only by relying on information provided by the insurers. This ongoing assessment does not necessitate a periodic reassessment in the form of a replication of the process that is generally followed for assessment of initial appointment of AMSB members. Additionally, supervisory review of governance arrangements or verification of a mere existence of a propriety policy of insurers without the risk-based verification of implementation of the policy by the supervisory authority does not fully meet the requirements of Article 29 and other related provisions of the SII Directive. Recommended actions in relation to ongoing assessments are addressed to the NCAs in following countries.

NCAs receiving recommended action to implement ongoing assessment of AMSB members

CY, DE, ES, FI, FR, LI, LU, NL, NO, SE, SK, UK

Ongoing assessment can take the form of any of the following practices:

- i. As part of ongoing supervisory activity
- ii. A themed review
- iii. Periodic reassessment

Further details on the above three supervisory practices are summarised in Annex 3.

3.5. ONGOING ASSESSMENT OF QUALIFYING SHAREHOLDERS

Sound and prudent management of insurers is one of the foundations of the Solvency II regime. The need for a sound and prudent management of the business, as a fundamental requirement, is emphasised upon a number of times within the SII Directive in general and within the SII Directive's '*General Rules on Taking Up and Pursuit of Direct Insurance and Reinsurance Activities*' in particular. For example, Articles 14 to 26 of the SII Directive lay down the conditions for authorisation⁷ of insurers. Conditions or principles specific to qualifying shareholders that NCAs need to evaluate are laid down in Article 24 as follows:

Article 24

Shareholders and members with qualifying holdings

1. *The NCAs of the home Member State shall not grant to an undertaking an authorisation to take up the business of insurance or reinsurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.*

⁷ E.g. Article 17 requires 'every undertaking for which authorisation is sought [...] to adopt one of the legal forms set out in Annex III'. Similarly, Article 19 requires NCAs to grant authorisation only if those insurers control relationship with owners do not prevent the effective exercise of their supervisory functions.

Those authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an insurance or reinsurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

The Article makes the provision of identities of shareholders and sound and prudent management conditions of authorisation, as without fulfilling these two conditions, NCAs are required to refuse or not grant authorisation. The SII Directive requires undertakings, once authorised, to continue to provide information in relation to shareholders to NCAs on an annual basis. Article 61 states:

Article 61

Information to the supervisory authority by the insurance or reinsurance undertaking

[...] The insurance or reinsurance undertaking shall also, at least once a year, inform the supervisory authority of its home Member State of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

From examining the provisions of the two Articles together (i.e. Article 24 and Article 61) it appears that the two Articles require insurers to provide information to enable NCAs to establish identities of shareholders and assess any potential risks to sound and prudent management of insurers. For acquisition of qualifying shareholding after authorisation, Article 59 requires NCAs to appraise qualifying shareholders. It also requires the NCAs to oppose the proposed acquisition if sound and prudent management of the insurer is at risk. Article 62 requires NCAs to take appropriate measures including injunctions, penalties and suspending voting rights against qualifying shareholders when sound and prudent management of the insurer is at risk.

Regulatory frameworks and supervisory practices for acquisition of qualifying shareholdings and change in qualifying shareholdings are subject to a number of recommended actions. However, EIOPA also considered whether NCAs should continue to pay attention to propriety of qualifying shareholders on an ongoing basis, after the initial approval ('ongoing assessment'). A number of factors that were considered to analyse this matter and adopt the next steps are summarised as follows:

- i. Is ongoing assessment independent of any evidence or new fact necessary?
- ii. Is there sufficient legal basis in the SII Directive, 3L3 or the joint guidelines for assessment of propriety of qualifying shareholders on an ongoing basis?
- iii. What should be the nature and form of ongoing verification or assessment?

i. Ongoing assessment independent of new evidence or fact

A view could be taken that once a qualifying shareholder has been assessed, there should not be any propriety assessment in the absence of any new evidence or facts. This view underlines two assumptions:

- a) An assumption of indefinite propriety; and
- b) An assumption that, without any determination, NCAs can assume no new evidence or facts (or that ongoing insurance supervision can - on its own - unearth all relevant civil and criminal matters).

EIOPA has analysed these two assumptions in the light of principles laid down in the joint guidelines. While the joint guidelines reflect the view that for fitness or competence such an assumption can be made in the absence of any evidence or facts, the guidelines state that the same assumption cannot be made in relation to propriety.⁸ The guidelines state that *Integrity requirements imply, but are not limited to, the absence of 'negative records'*.⁹ Paragraph 10.6 of the joint guidelines states: *'The target supervisor should always carry out an integrity check in respect of the proposed acquirer, as there might have been further developments since the date of the previous assessment or the authority having carried out such assessment might not have been aware of certain information...'*

To establish the lack of new evidence or facts requires a determination exercise rather than resorting to blind trust. Supervision of insurers will often reveal matters that may be relevant for supervisors' consideration for assessing ongoing propriety of qualifying shareholders. Integrated NCAs will have wider ambit of information available to them for consideration. However, supervision of insurers or integrated supervision is unlikely to identify all issues e.g. civil or criminal matters not within the scope of the NCAs. Additionally, the absence of criminal conviction

⁸ Paragraph 10.6 of the joint guidelines.

⁹ Paragraph 10.10. of the joint guidelines.

tion, prosecution, administrative and enforcement action does not necessarily mean compliance with propriety requirements, in particular where allegations of criminal conduct persist.¹⁰

ii. Legal basis for assessment on an ongoing basis

Propriety criteria, when met, form a core part of sound and prudent management of insurers and one of the pre-conditions of authorisation or approval of acquisition or change in qualifying shareholders. Once an insurer is authorised or acquisition approved, the sound and prudent management becomes one of the 'conditions governing business'¹¹ or the so called 'operating conditions'. The principle is at the core of cross-border cooperation, as Article 26(3) of the SII Directive calls for consultation between NCAs for the granting of an authorisation as well as for the ongoing assessment of operating conditions. The now replaced 3L3 guidelines had the following guidance in relation to ongoing assessment:

'C. Prudential assessment of acquisitions vs. on-going prudential supervision:

22. The Directive [Solvency I Directive and not the Solvency II Directive] focuses on the prudential assessment of a proposed acquirer only at the time of an acquisition or an increase in a qualifying holding in a financial institution. The Directive does not alter or reduce the competence of the supervisory authority to supervise the fitness and propriety of the existing qualified shareholders of supervised financial institutions on an ongoing basis, and to exercise their legal powers when an existing shareholder appears no longer to possess the required qualities.' [explanation within [] added for clarity]

Some of the guidance in the joint guidelines that highlight the need for ongoing assessment are as follows:

13.2 This specific assessment of the proposed acquirer's plan at the time of the acquisition is complementary to the responsibilities of the target supervisor for the ongoing supervision of the target undertaking.

8.3 Concerning the reputation of the proposed acquirer (as contemplated in Title II, Chapter 3, Section 10), while the target supervisor should always assess the integrity of the proposed acquirers against the same requirements regardless of the influence over the target undertaking, the assessment of

the professional competence should be reduced for proposed acquirers who are not in a position to exercise any influence over the target undertaking or who intend to acquire holdings purely for passive investment purposes.

EIOPA is of the view that there is sufficient legal basis for the ongoing assessment of qualifying shareholders' propriety within the SII Directive and the guidelines. Most NCAs acknowledge the importance of continued relevance of propriety of qualifying shareholders and no NCA has dismissed its importance. Some NCAs who have highlighted their view of the lack of explicit requirements for ongoing assessment have put arrangements in place (that they view as ongoing assessment) to identify issues surrounding propriety of qualifying shareholders – these arrangements are discussed below. In such circumstances, the issue of explicit requirements versus implicit requirements of ongoing assessment becomes less relevant and the form and nature of ongoing assessment becomes the focal point.

iii. Nature and form of ongoing assessment

National legislation in some countries requires insurers to provide information in relation to shareholders when certain events take place or scenarios occur. On the basis of these requirements, the respective NCAs have put forward the argument that such arrangements represent risk-based ongoing assessment of propriety. However, EIOPA is of the view that a heavy reliance on insurers to provide new evidence or facts to the NCAs without any proactive supervisory measures cannot constitute a risk-based ongoing assessment.

A significant number of NCAs, while fully acknowledging the importance of ongoing assessment of propriety of qualifying shareholders, have requested EIOPA to elaborate the term 'ongoing assessment' so the same can be implemented. Additionally, it would appear from the review of some NCAs' responses that the phrase 'ongoing assessment' was interpreted as the assumed obligation to perform a full reassessment, perhaps on an annual basis along the lines of initial assessment (i.e. completion of form by the acquirer and review by NCA). From EIOPA's perspective, for the ongoing assessment to be effective, it needs to be proportionate, focused on the underlying risks, and enable supervisors to use their judgement and understanding of the business model and risk profile of the insurers and its shareholders. Most importantly this assessment should be carried out as part of the NCAs' supervisory activities in a proportionate manner and should not seek to replicate the acquiring transaction review process i.e. completion and submission of forms by the

¹⁰ Paragraph 10.14. of the joint guidelines.

¹¹ As is apparent from the nomenclature of Chapter IV of the S II Directive.

shareholders and/or supervised insurers and review by the NCAs. Notwithstanding this, the NCAs should have the flexibility to request information from the insurers, shareholders or other regulatory authorities (including supervisory colleges or lead supervisors) when the need arises. The implementation of the recommended action in relation to ongoing assessment should also be proportionate, and consistent with the guidance available within the joint guidelines including the specific guidance for assessment of reputation contained in paragraph 8.3 of the joint guidelines (see above). Some of the characteristics of this risk-based and proportionate ongoing assessment can be tracked back to the joint guidelines as follows:

Paragraph 10.6

[...] the target supervisor may draw on the outcome of previous integrity assessments when deciding on the level and extent of new information sought. If the target supervisor has reasonable grounds to assume that the outcome of a new integrity assessment might be different from an existing assessment, for example because it is aware of adverse information concerning the proposed acquirer, a full integrity check should be performed. If the result of the integrity check is different from the existing assessment, the target supervisor should inform the authority having carried out the existing assessment.

Paragraph 10.18

The target supervisor should be able to take risk-sensitive and proportionate measures to verify the existence of adverse events relating to the proposed acquirer, including by asking the proposed acquirer, to the extent not already provided, to supply documents evidencing that no such events have occurred (for instance, recent extracts from the criminal register, if the relevant authority issues such extracts) and, if necessary, by requesting confirmation from other authorities (judicial authorities or other regulators), regardless of whether such authorities are domestic or foreign. The target supervisor should also consider, to the extent they are relevant and the source appears trustworthy, other indications of wrongdoing, such as adverse media reports and allegations.

Paragraph 10.17

[...] the information requirements on which the assessment of integrity is based may vary according to the nature of the acquirer (natural vs. legal person, regulated or supervised entity vs. unregulated entity).

EIOPA has carefully analysed various factors and where:

- NCAs provided details of existing arrangements, it has expressed its view as to what improvement can be made to ensure the NCAs have proactive and risk-

based processes in place for ongoing assessment – please see the supervisory practices in Annex 3; and

- NCAs have not put in place any arrangements or have not provided the details of their arrangements, it will share with the NCAs some of the existing supervisory practices by including the proposed improvements noted in the first bullet point.

Recommended actions are addressed to the following NCAs in relation to implementation or improvement of ongoing assessment of propriety of qualifying shareholders:

NCAs receiving recommended action to implement ongoing assessment of qualifying shareholders

AT, BE, BG, CY, CZ, DE, DK, ES, EL, FI, FR, HU, HR, IE, LI, LT, LU, LV, NL, NO, PL, SE, SI, SK, UK

Some NCAs have expressed a view that supervisory powers in Article 62 in relation to taking supervisory action against qualifying shareholders are provided for initial assessment only and that the SII Directive does not explicitly provide for ongoing assessment. An extension of this view is that this limitation is likely to undermine ongoing assessment in case such an assessment warrants supervisory measures against qualifying shareholders. This matter needs to be investigated as a follow up measure by EIOPA along with the following matters. An ancillary matter that may also need to be investigated is whether Article 19 of the SII Directive provides for adequate legal powers for NCAs to seek information directly from the qualifying shareholders or any other insurers or authorities that may have relevant information in this respect.

3.6. MAINTENANCE OF SUPERVISORY RECORDS OR DATABASE

A number of NCAs either do not have databases or do not maintain information for cases that were withdrawn following concerns raised by the supervisory authorities. The lack of records exposes the European internal market to a risk that relevant information is not captured in one country for future assessments or sharing with NCAs in other countries. EIOPA recommended seven NCAs to take action to improve their databases or processes to capture information about where moral suasion or informal engagement resulted in withdrawal of application in a country (see also section 4).

3.7. SOURCES OF INFORMATION FOR ASSESSMENT

Information about propriety is in practice collected from the following main categories of sources:

1. The application
 - a. Applicant (e.g. Curriculum Vitae or CV, personal identification or passport, signed declaration, certified documents, employment references)
 - b. Insurer (e.g. own propriety assessment, co-signing information provided by the applicant)
2. Internal sources of NCA
 - a. NCA's working knowledge within supervisory teams
 - b. NCA's own supervisory records or database(s)
3. Restricted sources of other authorities
 - a. databases of other national authorities (e.g. minister of justice, tax authorities, anti-money-laundering authority, NCAs in case of non-integrated supervision)
 - b. Supervisory records or databases of relevant foreign authorities
4. Public sources (e.g. public registers, internet, media)

EIOPA analysed whether and in what form information from criminal records, court registers, chamber of commerce, register of intermediaries, information of other financial sector authorities, internet searches, interviews and the applicant's CV are taken into account. The results of the analysis are summarised in the table below.

	AMSB member		Qualifying Shareholder Natural Person		Qualifying Shareholder Legal Entity	
	Yes	No	Yes	No	Yes	No
National criminal or administrative records/International criminal records or equivalent self-attestation	31	0	29	2	24	7
Information from Courts Registers	20	11	20	11	20	11
Information from Chamber of Commerce	11	20	11	20	13	18
Information from Register of intermediaries	19	12	19	12	19	12
Information from other financial sectors authorities	27	4	24	7	25	6
Internet search	29	2	29	2	29	2
Face to face interviews	12	19	6	25	(N/A)	(N/A)
CV	31	0	31	0	(N/A)	(N/A)

The information in the table above indicates the lack of harmonisation in the legal and regulatory frameworks in place across the EEA countries. For example, a number of sources in different countries do not contain useful information or the same information as contained in other countries e.g. court register, chamber of commerce, register of intermediaries. In all countries a CV is used, either in the form of a separate document or as part of a personal questionnaire to be submitted by the candidate.

Although (fit and) proper interviews are usually more relevant for the assessment of fitness than the assessment of propriety, such interviews are considered by EIOPA as a good source of information to the extent that they take place on a risk-based basis for the governance assessment of the insurer, the critical nature of the position applied for or the track record of the applicant. A minority of NCAs perform face to face interviews.

CASE STUDY 4



REASSESSMENT BASED ON NEW ELEMENTS

Person Z was a member of the board of an insurer under supervision of an NCA.

Person Z's name was mentioned, in the press, in relation to not abiding by the rules of tendering specific processes and of conflict of interest. Person Z requested an interview with the NCA in relation to these accusations where the the NCA decided that there was enough substance to start a reassessment. In addition the NCA found out that in the fit and proper interview for the position on the board, Person Z had not been transparent about the conflict in this process.

Person Z came to the conclusion that the reassessment would possibly result in the propriety no longer being beyond doubt and decided to step down 'voluntarily' from the position on the board of the insurer.

How did the peer review address the issues found in this case study?

The case study highlights that circumstances relating to propriety can materially change even in cases of persons who have undergone (fit and) proper assessments. The case study also emphasises the importance of ongoing assessment of fit and proper assessments, in this case an ad-hoc assessment. Annex 3 outlines some further examples of how an ongoing propriety assessment of AMSB members and qualifying shareholders can be implemented by using a risk-based approach and without replicating the process used for initial or ad-hoc assessments.

Most NCAs use electronic databases for storing information in relation to the assessment besides paper filing systems. NCAs have internal policies on the relevance of information with respect to time. An often used approach is to not take information into account concerning facts that date back more than ten years.

Where any sources of information are not consulted by the NCAs, EIOPA analysed whether the NCAs have implemented alternate measures to consider the information or require self-attestation by applicants. Where alternate measures were lacking or measures implemented did not result in taking into account the information required by the Delegated Regulation and the EIOPA SoG guidelines, EIOPA considered the definition and/or scope of the propriety assessment to be narrow or limited which resulted in a recommended action to the NCA.

3.8. PROPRIETY AT GROUPS AND HOLDING COMPANIES

Article 257 of the SII Directive requires all persons running the insurance holding company or mixed financial holding company to be fit and proper to perform their duties. The fit and proper requirements established by Article 42 of the SII Directive for insurers apply *mutatis mutandis* at group level.

The application of (fit and) proper requirements at holding company level by NCAs was observed in all cases with the exception of Hrvatska agencija za nadzor financijskih usluga (HANFA - HR), which resulted in a recommended action being addressed to HANFA.

4. CROSS-BORDER COOPERATION

Cross-border cooperation plays a pivotal role in the functioning of the internal market. EIOPA noted that in general, cooperation within the internal market functions better compared with cooperation with third countries, albeit a number of areas need attention for improving the cooperation between the countries (discussed below).

4.1. COOPERATION WITH EEA AUTHORITIES

Supervisory convergence among countries and effective cross-border cooperation are the two main aspects of propriety assessments in the internal market. The peer review has highlighted a number of areas that could potentially result in impediments between countries in relation

to propriety assessment within the internal market. The areas are briefly discussed below.

One of the areas concerned is the recording and maintenance of the supervisory records. Seven NCAs are recommended to develop or improve their supervisory records or databases in relation to propriety assessment (Belgium, Denmark, France, Greece, Italy, Slovakia, Spain).

4.2. DIFFERENCES IN CROSS-BORDER COOPERATION

The EIOPA BoS Decision of February 2017 on the collaboration of the NCAs contains in section 2.4., certain provisions concerning the 'exchange of information

CASE STUDY 5



EFFECTIVE EXCHANGE OF INFORMATION

An NCA in a country ('the requesting NCA') requested the NCA in another country ('the recipient NCA') for information about the propriety of some members of the AMSB of an insurer that was to establish itself as an insurer in the first country. The recipient NCA consulted all the relevant sources in its country (not only its internal register or database) and sent its assessment to the requesting NCA.

On the basis of the negative assessment, the requesting NCA contacted the insurer informally in order to invite it to withdraw its application and the insurer followed the invitation. Although there were no

convictions in place, the concerns expressed by the recipient NCA were supported by the relevant documentation and proved sufficient for the requesting NCA to exercise effectively its moral suasion on the insurer.

How did the peer review address the issues found in this case study?

The case study emphasises the importance of maintaining proper supervisory records to ensure that important supervisory concerns are considered during assessments or shared with other NCAs.

on all persons who effectively run the insurer or hold other key functions, shareholders and members with qualifying holdings' (see paragraphs 2.4.1. to 2.4.7). There are two very different approaches to cross-border cooperation. In responding to cross-border requests, some NCAs consult their own as well as other national sources of information – essentially completing the same steps as they would complete for their own assessments. Other NCAs consult only their own records or databases.

In addition, as highlighted in case study 1, there are also cases where, notwithstanding the fact that NCAs consult each other in order to receive information concerning the propriety of a particular person, the final outcomes in the assessment diverge due to different applications of the assessment criteria.

From the responses received by the requesting NCAs, it is not always clear what sources were consulted and checks performed, potentially exposing the NCAs to different understanding of the scope of the verification completed. It is proposed to recommend that EIOPA develops some guiding principles and a template for cross-border cooperation. The guiding principles are expected to define what NCAs need to check if they receive a cross-border request from another NCA i.e. scope of the verification. The proposed template will ensure clarity in relation to sources checked, verifications performed and the results of the verifications.

In addition, EIOPA is recommended to assess the need to develop explicit questions for NCAs to incorporate in their assessment to ensure that the supervisory process to gather information is comprehensive and differences in criminal and civil laws of countries are not resulting in gaps in terms of information gathering and assessment.

4.3. JOINT ASSESSMENTS AND INTERVIEWS

In some complex cross-border cases, records or information about supervisory concerns are maintained in one country whereas the appointment application is lodged in another country. Sharing of information, in particular information about concerns that could lead to refusal of application, is often quite a cumbersome process. At times, the cooperation involves a series of engagement or correspondence between the NCAs and is time consuming. In these complex cases, the NCAs from countries can support one another by conducting joint assessments and interviews to ensure that the process is efficient as well as effective. EIOPA is recommended to consider this option and, if considered a workable solution for complex cases, develop a brief guidance or working protocol in this respect ensuring that the primary responsibility to make decisions continues to rest with the home NCA. The solution implemented should be compliant with the General Data Protection Regulation (GDPR) requirements.

4.4. COOPERATION WITH NON-EEA AUTHORITIES

The SII Directive allows conclusion of cooperation agreements between the countries and third countries subject to professional secrecy obligations.¹² There has been a mixed experience of NCAs in relation to cooperation with third country NCAs. Nevertheless, to deliver on the objective of supervision of protecting policyholders and beneficiaries, EIOPA encourages NCAs to endeavour to obtain all relevant information to assess the propriety of AMSB members and qualifying shareholders.

¹² Article 66 of the SII Directive.

5. IMPACT ON COMMON SUPERVISORY CULTURE

A common supervisory culture will underpin convergence of supervisory practices, including a common interpretation of the laws and regulations, without prejudice to the application of the proportionality principle... The European supervisory culture can be defined as a common understanding of the way supervisors think, behave and work within their community. This culture manifests itself in processes and procedures, but also in behaviour. In arriving at a common culture, processes and procedures are easier to align than behaviour. The objective is to align at different paces.¹³

In terms of the relationship between (fitness and) propriety and the broader supervisory framework or activities, EIOPA has analysed legal and regulatory frameworks and supervisory processes across 31 EEA NCAs. The implementation by NCAs of recommended actions will contribute towards supervisory convergence. Whether an initial appointment of an AMSB member or a qualifying shareholder is approved, the ongoing assessment of propriety will be dependent upon the quality and effectiveness of the broader supervisory framework and activities. Critical to this relationship will be the factors that underpin the supervision such as resourcing levels of NCAs, supervisory culture and the ability of the supervisory engagement model or framework to identify (fitness and) propriety issues and translate them into actionable information for initial or ongoing propriety assessments.

The peer review has highlighted differences in national legal and regulatory frameworks as well as in supervisory processes in relation to propriety assessments. NCAs

across the EEA use different sets of information and assess this information according to different propriety standards, which increases the risk of assessments resulting in different outcomes. EIOPA, through this peer review, has sought to bring common understanding of areas of national legal and regulatory frameworks as well as in supervisory processes. A number of best practices have been identified that, if implemented, will result in strengthened national frameworks as well as supervisory culture within the internal market. EIOPA has also committed to take initiatives in some areas to further strengthen the functioning of the internal market. The impact of this peer review on common supervisory culture can be summarised as follows:

- 80 recommended actions addressed to NCAs will strengthen the national legal and regulatory frameworks and supervisory processes. These recommended actions, if implemented, will result in increased harmonisation and better alignment with the European regulatory framework.
- 4 recommended actions addressed to EIOPA will strengthen the functioning of the internal market at the EEA level.
- 8 best practices identified to inspire NCAs to benefit from each other's experience (see Annex 1).
- Annex 3 provides guidance to NCAs in relation to how ongoing assessment of propriety of AMSB members and qualifying shareholders can be implemented as part of NCAs' supervisory activities.

¹³ EIOPA: A Common Supervisory Culture: <https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/A%20Common%20Supervisory%20Culture.pdf>.

6. THE NEED FOR 'FIT AND PROPER' REQUIREMENTS AS A SUPERVISORY TOOL

Fit and proper requirements are a cornerstone of prudential supervision in today's world. Before the financial crisis, which triggered in 2008, there was a growing recognition of the relationship between the lack of fitness and propriety of the key persons of institutions that failed, participated in market abuses or failed to protect their investors, creditors and policyholders. The financial crisis reaffirmed this recognition and led to calls for better accountability and enforcement of fit and proper requirements. The fit and proper requirements and the legal powers for supervisors to enforce those requirements are part and parcel of all financial sectors regulatory frameworks. Nevertheless, the use of powers by NCAs, to refuse a person from taking up a position or removing them from an existing position they are in, is not an easy task. The enforcement of the fit and proper rules restricts a person's ability and choice of how they earn their livelihood. The supervisory experience highlights that, when a supervisory decision is challenged in

a court of law or administrative tribunal, often the NCAs have to demonstrate not only that they followed a due process in imposing the fit and proper rules but also that the imposition of the rules is critical in protecting the wider public interest and maintaining the integrity of the financial system.

From the perspective of supervision of insurance sector, there have been various studies and ex-post analysis of insurance failures that highlight the need to have fit and proper persons running the insurers to protect the wider public interest i.e. protect policyholders and beneficiaries. To this end, Annex 2 provides evidence of the relationship between the failures or near failures of insurers that put the policyholders' interest at risk and the lack of fitness and propriety of key persons running those insurers. In developing Annex 2, EIOPA has leveraged of the work summarised in two reports, namely the Müller report and the Sharma report.

ANNEX 1: BEST PRACTICES IDENTIFIED DURING THE REFERENCE PERIOD

No.	Topic of the report	Country	Best practice identified during reference period
1	Legal and regulatory framework	UK	<p>EIOPA considers it a best practice when an NCA's regulatory framework ensures accountability of individuals and allows it to take timely action in case of supervisory breaches.</p> <p>The Prudential Regulation Authority's (PRA) regime sets out number of responsibilities to be discharged by one or more controlled functions. The framework of responsibilities ensures clarity in setting out PRA's overall expectations and assigning these responsibilities to individual roles. This ensures individual accountability as roles and responsibilities are clearly defined also for the assessment of (fitness and) propriety and provide a strong basis for enforcement actions or assessment of future applications.</p> <p>Insurers are required to draft and submit an application for the approval of an individual by the PRA along with a scope of responsibilities which is required to clearly show the responsibilities that individuals have as part of their control function and how they fit in with the insurer's overall governance and management arrangements.</p>
2	Access to sources of information/ cooperation with other authorities	DE	<p>EIOPA considers it a best practice when supervisory assessment of AMSB members takes records into account that are comprehensive in their nature and scope.</p> <p>The Federal Office of Justice in DE uses the European Judicial Network for the facilitation of judicial cooperation in criminal matters. The criminal register in Germany is operated by the Federal Office of Justice and the Register holds domestic judgments of criminal courts and - after an assessment entailing a comparison of laws - foreign criminal convictions handed down against German citizens or against foreigners living in Germany. The citizens of other Member States of the European Union residing in Germany may be issued with a certificate of criminal record, which provides information in relation to the entries into the Federal Central Criminal Register and also the criminal register of their home Member State (European certificate of criminal record). If a European certificate of criminal record is applied for, the Federal Office of Justice will request the applicant's home Member State to provide the contents of its register so that this can be included in the certificate of criminal record. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) considers the European certificate of criminal record in its assessment.</p> <p>NCA's can consider adopting a risk-based and proportionate approach in requesting a European certificate by taking advantage of the European Criminal Records Information System (ECRIS).</p>

No.	Topic of the report	Country	Best practice identified during reference period
3	Access to sources of information/ cooperation with other authorities	UK	<p>EIOPA considers it a best practice when an NCA's regulatory framework allows insurers to exchange information for propriety assessment.</p> <p>The UK authorities have implemented a Policy statement on regulatory references that enables insurers to request employment references using a set form from previous employer(s) when recruiting individuals into certain functions or roles. The practice supports the requirements of Article 42(i)(b) of the SII Directive which states that (re)insurers shall ensure that all persons who effectively run the insurer or have key functions must at all times fulfil the requirements for good repute and integrity.</p> <p>While regimes implemented in a number of other countries seek and rely on employment references, the PRA's regulatory references are supported by a detailed regulatory framework, including specific guidance. The references assist the authority to discharge its gatekeeper role in an efficient and effective manner by providing a mechanism that allows sharing of important information on a set form between insurers and help insurers prevent 'recycling' of individuals with poor conduct records between insurers.</p> <p>The references provide a mechanism for the supervised insurers to ensure that the AMSB members are both fit and proper at all times as required by Article 42 of the the SII Directive and Article 273 of the Delegated Regulation.</p>
4	Exchange of information/ cooperation with other authorities	NL	<p>EIOPA considers it a best practice when the legislation provides a framework that explicitly requires NCAs within the same country to share information with each other.</p> <p>De Nederlandsche Bank (DNB) supervises banks, pension funds, insurers as well as payment insurers while the Dutch Authority for the Financial Markets (AFM) is responsible for financial market and conduct supervision. For fit and proper assessments of management and supervisory board members, DNB is obliged by law to consult the AFM. The two NCAs may decide to attend assessment interviews of the other authority.</p> <p>The authority consults various other public and non-public sources of information like the Financial Expertise Center (cooperation between DNB, AFM, Public Prosecutor, Police, Financial intelligence Unit, Tax Authorities); the Tax and Customs Administration; the public prosecutor's office for conviction, the Chamber of Commerce; the Graydon database (fee based private source to check if someone is involved in a bankruptcy procedure), declarations from candidates for pending proceedings if necessary and other sources of information from relevant foreign financial NCAs or criminal law authorities. Section 7, paragraph 1 of the Decree on Prudential Rules provides an exhaustive list of authorities the authority is permitted to consult.</p>
5	Supervisory database	IE	<p>EIOPA considers it a best practice when NCAs develop a database that ensures (fitness and) propriety information is readily available, persons requiring in depth propriety assessment based on historical supervisory breaches or other concerns are identified, information in relation to withdrawals and refusal of applications by the supervisory authority is recorded for future assessment or sharing of information with other supervisory authorities.</p> <p>The Central Bank of Ireland (CBI) has a database that captures historical information on candidates on a name basis, tracks withdrawals and in addition flags people that have been refused approval or require in-depth assessments. The database tracks the employment history of all individuals which enables supervisors to link individuals to insurers where supervisory issues arose in the past.</p> <p>The existence of a historical database combined with the flagging system on all assessments may assist an NCA in its work by making the process much more effective and efficient and is also beneficial for the effective cross-border cooperation and information sharing with other NCAs in view of Article 31(i) of the SII Directive.</p>

No.	Topic of the report	Country	Best practice identified during reference period
6	Possibility to stay assessment (or put assessment on hold) in case of pending investigations	LI	<p>EIOPA considers the ability to suspend or put the assessment on hold a best practice.</p> <p>Assessment of propriety is a time sensitive supervisory task. Often NCAs are bound by timelines provided by national legislation, supervisory practices or expectations from the national legal and regulatory framework. Article 4, §3 of the Insurance Supervision Ordinance (ISO) permits the Financial Market Authority (FMA), in case of a pending proceeding for criminal or administrative offences, to “suspend its assessment”.</p> <p>When an applicant is facing a pending criminal or administrative sanction proceeding, an ability to suspend the assessment by the authority may provide a practical alternative to deciding between two options that may pose future challenges for the authority.</p>
7	Ongoing verification of operating condition in relation to propriety (propriety) of qualifying shareholders	IT	<p>EIOPA considers it a best practice when an NCA develops a well-structured framework that includes:</p> <ol style="list-style-type: none"> 1. Internal guidelines which are well structured and detailed. 2. Systematic verification of information transmitted by the proposed acquirer of qualifying shareholding. 3. Consultation with several authorities (Courts, Central Bank, Financial Intelligence Units, etc.) to establish whether or not there exists any adverse information. 4. Requiring qualifying shareholders to provide notification and details of any material changes to the information previously provided to the supervisory authority. <p>The framework implemented by Istituto per la vigilanza sulle assicurazioni (IVASS) meets all of the above attributes and results in a supervisory process that appraises or verifies the propriety of qualifying shareholders on a continuous basis, as is envisaged by Article 59, 34 and other related provisions of the SII Directive.</p>
8	Supervisory verification on a continuous basis of the compliance with propriety requirements for AMSB members	SK	<p>EIOPA considers it a best practice when legal and regulatory framework implements a structured approach for ensuring that the AMSB members meet (fit and) proper requirements at all times.</p> <p>The National Bank of Slovakia (NBS) requires the insurers to reassess AMSB members every two years and to advise the supervisory authority in case of material changes. During the on-site inspection the supervisors review reassessments, on a sample basis, and verify whether the insurer followed propriety policies.</p> <p>The practice supports the requirements of Article 42(i)(b) of the SII Directive which states that (re)insurers shall ensure that all persons who effectively run the insurer or have key functions fulfil the (fit and) proper requirements at all times.</p>

ANNEX 2: THE NEED FOR ‘FIT AND PROPER’ REQUIREMENTS AS A SUPERVISORY TOOL

Fit and proper requirements for key functions and qualifying shareholders are core part of today's legal framework for financial sector supervision. The requirements are well embedded in today's supervisory framework and accepted as one of the conditions for effective supervision. However, from time to time, supervisors' refusal to approve a person or shareholder face challenge in a court of law or administrative tribunal. When this happens, and notwithstanding that every case needs to be decided on its own merits, the challenge or appeal process often finds it useful to revisit the need to apply the fit and proper requirements test. This annex revisits:

1. The Report: Solvency of Insurance Undertakings prepared for the Conference of Insurance Supervisory Services of the Member States of the European Union (the Conference)¹⁴ (Müller Report) prepared by the Solvency Working Group and issued in April 1997.
2. The work that informed the development of the Solvency II legislation, namely the Report: Prudential Supervision of Insurance Undertakings prepared by the London Working Group of the Conference (Sharma Report).
3. Role and size of Euro area financial Sector and preconditions for supervision.

A. THE SOLVENCY WORKING GROUP AND THE MÜLLER REPORT

The Solvency Working Group was set up by the Conference in April 1994 to examine the solvency regulations for the European Commission. The working group considered the experience of insurance supervisory authorities of the Member States as well as North American insurance supervisory authorities and the EU banking supervisory authorities. The working group analysed which risks an insurer is exposed to in carrying on its activities and what preventive measures

are available that would be suitable, apart from the own funds [solvency margin], to absorb or at least reduce the risks recognised. To this end, the working group analysed the financial difficulties occurring in insurers in EU Member States¹⁵. In identifying the principal risks in connection with observed difficulties, the Müller Report observed:

The frequent emphasis on management risk is striking. Almost all the submissions describe as very serious the dangers arising from management that fails to meet the “fit and proper” criteria. Most delegations also attribute the problems arising in the four core areas/ core risks ultimately to inappropriate management behaviour (management information system failure), with the result that management risk represents a kind of overarching or exceptional risk.

[...]

Management risk

In the opinion of some delegations, this risk hangs over all other risks to which an insurance undertaking operating on the market is exposed. From this point of view, controlling and ensuring sound and prudent management is far more important than the solvency system, because management errors by their nature cannot be compensated by solvency requirements. Supervisory authorities must therefore combat criminally disposed or incompetent management by drawing up a specific set of requirements against which managerial aptitude can be assessed and by monitoring senior managers. Ultimately, however, deception and incompetence can never be entirely ruled out, with the result that (residual) management risks cannot be offset by tightening up own funds requirements.

[...]

It may be presumed that if management acts responsibly, sufficient account will be taken in the day-to-day running of the business of the principal risks connected with observed difficulties, making it possible to alleviate the negative repercussions of such risks. For that reason, “fit and proper” management is essential if the statutory solvency ratio, even after modification, is to take appropriate account of residual risks in the future.

¹⁴ In 2004, the Conference of the European Insurance Supervisory Authorities was transformed into CEIOPS [Committee of European Insurance and Occupational Pensions Supervisors]. CEIOPS was later transformed into EIOPA.

¹⁵ Annex 1 of the report: https://eiopa.europa.eu/CEIOPS-Archive/Documents/Reports/report_dt_9704.pdf.

B. THE LONDON WORKING GROUP AND THE SHARMA REPORT

The London working group¹⁶ report was issued in December 2002¹⁷ in the following contexts as documented in the report:

In May 2001 the European Commission began a fundamental review of insurance regulation, the 'Solvency II' project. The EU Insurance Supervisors Conference ('the Conference') was asked to make recommendations for that review, and to that end set up this Working Group of insurance supervisors to look at the practical lessons from the past and to highlight emerging trends in the risks faced by insurance companies.

The London working group used its practical experience to understand the risks to solvency of insurance insurers and how better to monitor insurers' risk management. Specifically, the working group built on the 1997 Müller Report to formulate a more up-to-date picture of the risks that European insurance insurers face, and to this end identified and analysed the risks that had led to actual solvency problems between 1996 and 2001, or created a significant threat to the solvency of an insurer ('near misses'). In this respect, the working group considered twenty-one detailed case studies to analyse all the various causes of difficulties and how they were related to each other in practice. The working group also built on the work of the Solvency Working Group as summarised in the Müller Report.

Although a well-managed firm can still fail, poor management makes a firm vulnerable and we believe that in practice it is the primary root cause of most problems in insurance firms. We found that poor management can take one or more of the following forms:

- (i) management are competent but have an excessive risk appetite or a lack of integrity or independence; or*
- (ii) they operate outside their field or level of competence;*
- (iii) they fail to put in place adequate decision-making processes or adequate internal controls."*

The London Working Group, in following a cause-effect approach, noted that some risks were linked to other risks

¹⁶ The working group was made up of insurance supervisors from most Member States, together with a member of the Conference Secretariat. Member States represented on the working group were: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Portugal, Spain and the UK. Contributions were also received from Iceland, Norway and Sweden.

¹⁷ http://ec.europa.eu/internal_market/insurance/docs/solvency/solvency2-conference-report_en.pdf.

in causal chains and that analysing the full causal chain improves supervisory practice. In summarising its key findings in the report, the working group noted:

In each of the detailed case studies we examined we found a chain of multiple causes. The most obvious causes were the inappropriate risk decision, the external 'trigger event' or the resulting adverse financial outcomes. However, further analysis showed that these causal chains began in each case with underlying internal causes, being problems with management or shareholders or other external controllers; these problems included incompetence or operating outside their area of expertise, lack of integrity or conflicting objectives, or weakness in the face of inappropriate group decisions. This empirical analysis of actual cases, which depended on supervisors sharing and scrutinising confidential information, is an important contribution of this Working Group and complements academic studies by others.

The London Working Group concluded that the review of solvency needs to encompass governance and risk management. To this end, it noted that:

1.4.1 Our need to tackle the full causal chain means that as well as considering solvency it is important that we have tools to focus on management and how they manage risk. Our tool-kits will therefore need to be wide and include informal and subjective tools to deal with management, internal controls etc., and our more detailed findings and recommendations cover solvency and many other areas.

[...]

4.6.3 It can be highly valuable to detect underlying causes like management at an early stage even though they are often the most difficult to detect, especially before other more visible causes have appeared (such as an inappropriate risk decision). Underlying causes like poor management can have many different implications throughout a firm's activities. Thus if they can be detected, and subsequently controlled in some way, a wide variety of potentially serious and solvency threatening cause-effect chains could be interrupted at a very early stage.

[...]

5.6.5 Fit & proper rules also present challenges, as it can be hard to decide when someone has become unfit. In some case studies, senior management's experience may have been appropriate when they took up their posts, but the business and marketplace has evolved around them while their knowledge becomes more out-of-date. We recommend periodic reassessment including re-analysis of the firm's business and environment, and in particular, where there is any change in its strategy.

[...]

6.4.1 In practice all sound supervisory systems involve a mixture of being prepared and being resilient. Our current solvency regime, embedded in the existing Directives, puts a lot of emphasis on financial resilience, by ensuring that undertakings have sufficient financial resources to recover from adverse effects. Supervisory practice in Member States also tends to focus on the technical areas. However, our work suggests that a supervisory system is needed that can tackle not only financial effects but also the underlying and intermediate causes of these effects, with a view to addressing problems before they occur. In short, we need a system that is equipped to deal with the widest possible range of risks and all stages in the cause-effect chain.

[...]

6.5.2 We need an increased focus on management (see sections 4.6.3 and 5.6), which may include a fit @ proper regime, examining the individual's propriety in the context of a particular post and set of responsibilities within the firm. In particular, the fit @ proper regime and allocation of responsibilities must be the Board's responsibility as a crucial part of corporate governance. Balance is needed in applying such rules to make them effective and not too bureaucratic – an informal assessment rather than ticking off large checklists. Supervisors also need increased focus on group issues, particularly remote control by group controllers of local insurance operations.

C. ROLE AND SIZE OF EURO AREA FINANCIAL SECTOR AND PRECONDITIONS FOR SUPERVISION

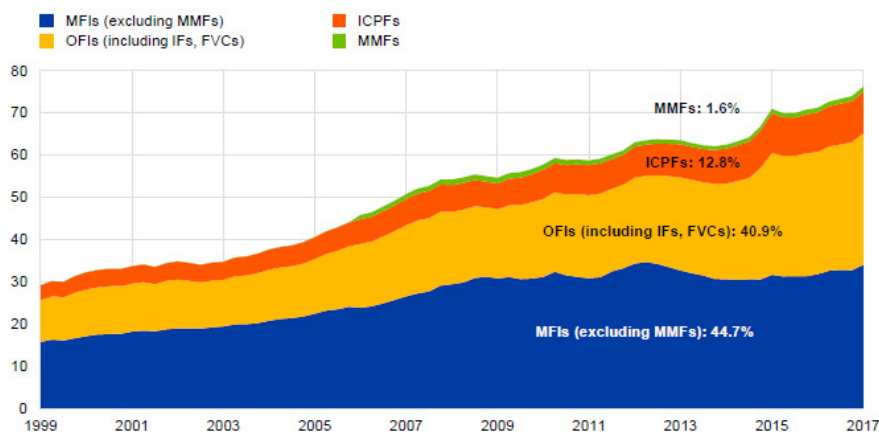
ROLE AND SIZE OF EURO AREA FINANCIAL SECTOR

Financial services play an important intermediation role. For example, banks convert public's savings into credit and act as payment system clearing houses. Investment firms turn surplus funds into investment opportunities and create financial markets. The insurance industry acts as a financial stabiliser by collecting premiums from a large number of people to provide protection to policyholders and beneficiaries and also provides investment and retirement products. Overall, the financial services sector is the custodian of public's funds and trust.

In March 2017, the size of the overall euro area financial sector (financial assets held) was about €76.2 trillion. This size has increased from just under €30 trillion in 1999¹⁸. The Eurozone insurance and pension sector contributes over €10.2 trillion to this figure¹⁹. As an example and in order to demonstrate the importance of propriety for the financial sector this annex only covers the Eurozone countries, however the peer review covered all the EEA countries.

Total assets of the euro area financial sectors

(March 1999 – March 2017, EUR trillions)



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

¹⁸ Source: ECB - See pages 6 and 7 of *Report on Financial Structures* October 2017 <https://www.ecb.europa.eu/pub/pdf/other/reportonfinancialstructures201710.en.pdf>

¹⁹ See page 45 of the above noted ECB report.

A failure of a financial services firm not only adversely affects the individual customers but often has a devastating impact on society at large or even across many societies across numerous jurisdictions. The last financial crisis made this interconnectivity abundantly evident. The size of the financial sector makes it imperative that the persons performing important roles within financial services firms are of good repute and integrity i.e. fit and proper.

PRECONDITIONS FOR SUPERVISION

The main objective of supervision is the protection of policyholders and beneficiaries. To deliver on this objective, effective insurance supervision requires a number of preconditions²⁰. Two of the preconditions required for effective supervision are as follows:

Precondition	Description
A well-developed public infrastructure	This includes among other things, a system of legislation covering business laws, including corporate, insolvency, contract, consumer protection and private property laws which is consistently enforced
Effective market discipline in financial markets	Existence of appropriate corporate governance frameworks and ensuring accurate, meaningful, transparent and timely information

It is important both above preconditions are consistent with the international standards issued by global standard setting bodies and consistently enforced by national supervisors. From an insurance supervision perspective, the global standard setting body International Association of Insurance Supervisors' (IAIS) international standard or Insurance Core Principle 5 requires that *"The supervisor requires Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of an undertaking to be and remain suitable to fulfil their respective roles."* The persons covered by the ICP 5 need to demonstrate their fitness and propriety at the time of licensing or acquisition of significant shareholding as well as on an ongoing basis. From a European perspective, the SII Directive, EIOPA guidelines on system of governance and the joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (together fit and proper European framework) provide the infrastructure and the bases for effective market discipline. It is important that national legislative and regu-

latory frameworks transpose the European requirements and that the NCAs have the ability to enforce these requirements. For the effective functioning of European internal insurance market, cross-border cooperation and exchange of information is also important.

CONCLUSION

The annex has summarised the empirical evidence from the work that highlighted the link between insurance failures and the need for fit and proper requirements. The work also informed the development of the current Solvency II regime as well as the IAIS work²¹. The primary responsibility for compliance with fit and proper requirements rests with insurers and significant owners. Notwithstanding the primary responsibility, the NCAs need to have the supervisory tool to enforce fit and proper requirements throughout the insurance business's life cycle. This involves:

- transposition by national legislature of the fit and proper European framework into national legislation and regulatory requirements to provide legal certainty;
- NCAs putting in place supervisory practices that implement legal and regulatory requirements and having the ability to obtain information from the candidates, insurers and other institutions or authorities that are in possession of relevant fit and proper information; and
- cooperation and sharing of information between the NCAs.

Finally, the NCAs need to use the supervisory tool in an objective and transparent manner that on one hand ensures safety of the insurers and financial system and on the other is able to withstand the legal or administrative scrutiny.

²⁰ See Assessment Methodology of the International Association of Insurance Supervisors (IAIS): <https://www.iaisweb.org/page/supervisory-material/insurance-core-principles>.

²¹ See Appendix A of the Supervisory Standard On Fit And Proper Requirements And Assessment For Insurers issued in 2005 by IAIS.

ANNEX 3: ONGOING PROPRIETY ASSESSMENT OF AMSB MEMBERS AND QUALIFYING SHAREHOLDERS

A. ONGOING ASSESSMENT OF AMSB MEMBERS

Ongoing assessment of AMSB members by NCAs can include any of the following commonly used supervisory practices. The three practices described below are the most commonly used supervisory practices. NCAs can certainly develop their own practice that may be different to any of the options below but is expected to achieve similar outcome. In deciding on the level and extent of the ongoing assessment, NCAs may draw on the outcome of previous integrity assessments.

AMSB - SUPERVISORY PRACTICE 1

As part of their ongoing supervisory activity

Review of insurers' reassessment of AMSB members during an offsite review or onsite inspection. The review or inspection can be either an inspection specifically dedicated to the design and implementation of (fit and) proper policy and process of the insurer or a part of governance review. This supervisory review or inspection should not only cover the policy but the actual reassessment by the insurers should be reviewed. The frequency of this supervisory review or inspection could be linked with the existing governance reviews carried out by the NCAs based on insurers' classification. For example an insurer classified as significant would be subject to more frequent governance reviews (say every two years) compared with a less significant insurers (say every three or four years). This approach is also in line with the approach recommended by the Joint ESMA and EBA guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (March 2018), i.e. guidelines on the assessment of the propriety of members of the management board and key function holders.

AMSB - SUPERVISORY PRACTICE 2

A themed review

Review of insurers' design and implementation (fit and) proper policy (including assessment or reassessment of AMSB members) as part of a themed / horizontal review of a sample of insurers. The NCAs choose a sample of insurers on the basis of supervisory judgement and risk profile of the insurer. The NCAs can undertake this review from time to time – this need not be carried out on an annual basis. Generally, a report by the NCAs (containing findings common across all or most of the insurers) following the themed review provides a good profile to the area being reviewed and encourages the insurers to implement findings made public. Findings that are insurer specific or not common across a number of insurers are not published for confidentiality reasons. Please see a report published by the Central Bank of Ireland following a themed (fit and) proper review of credit unions authorised in Ireland. See <https://www.centralbank.ie/docs/default-source/publications/thematic-fitness-probity-inspections-credit-unions.pdf?sfvrsn=4>

AMSB - SUPERVISORY PRACTICE 3

At the point of renewals of mandates or periodic re-assessment

A number of countries' national legislation (mostly corporate legislation) require AMSB members to appointed for a fixed term (3 to 5 years). If the AMSB members decide to renew their contract, the insurers as well as NCAs perform full reassessment. Some NCAs require insurers to perform reassessment on annual basis and provides the results of the reassessment to the NCAs (e.g. Ireland and Italy). Both these practices (i.e. reassessment at every renewal or annual reassessment), ensure that the AMSB members are subject to frequent (fit and) proper assessment.

B. ONGOING ASSESSMENT OF QUALIFYING SHAREHOLDERS

EIOPA has considered supervisory practices adopted by some NCAs in relation to ongoing assessment of qualify-

ing shareholders. EIOPA has included three such supervisory practices and expressed its view as to what improvement can be made to ensure the NCAs have proactive and risk-based and proportionate processes in place for ongoing assessment of propriety of qualifying shareholders.

QUALIFYING SHAREHOLDERS - SUPERVISORY PRACTICE 1



RISK ASSESSMENT OF OWNERSHIP - AS IMPLEMENTED BY THE KOMISJA NADZORU FINANSOWEGO (KNF), POLAND

The ongoing assessment of qualifying shareholders is made annually within the Risk Assessment Framework (BION), within a dedicated part of the assessment of ownership. The assessment takes into account in particular whether:

- the owner of the insurer is financially stable (e.g. taking into account rating) and the owner provides substantive and capital support.
- the owner properly reacts to capital needs of the insurer.
- the investors commitments are fulfilled.
- the insurer has in place a system of on-going reporting to the owner.
- the shareholding structure makes it possible to effectively manage the insurer.
- the insurer concluded any significant transactions with shareholders, persons having a substantial influence on the insurer and the Supervisory Board or the Management Board members and, if so, what kind of transactions have they been.
- the insurer complies with the guidelines/recommendations of the supervisory authority or, if not, was the justification presented by the insurer for non-compliance sufficient.

- there have been any reservations about ownership resulting from the day-to-day supervision or on-site inspections performed.
- the supervisory authority had reservations about the group or financial conglomerate to which the insurer belongs.

What improvements can be made to the KNF's practice to implement ongoing assessment of qualifying shareholders' propriety

The KNF's BION risk assessment process is a practice that is closest to a best practice in relation to ongoing assessment of qualifying shareholders. If the KNF brings the propriety or integrity aspects of qualifying shareholders into its risk assessment, then the BION risk assessment will be the most robust practice that considers propriety of qualifying shareholders on an ongoing basis. EIOPA's view is that it is not necessary for the KNF to ensure 100% coverage of its insurers on an annual basis, the propriety aspects can be assessed by following a risk-based approach and the KNF can also consider exploring the avenues discussed in case studies 2 and 3 for obtaining information from other sources.



INFORMATION ABOUT QUALIFYING SHAREHOLDERS FROM SUPERVISED INSURER – AS IMPLEMENTED BY THE PRUDENTIAL REGULATION AUTHORITY (PRA), UK

An authorised firm must notify the PRA immediately if it becomes aware of any of the following matters in respect of one or more of its qualified shareholders:

- a) if a controller, or any entity subject to his/her control, is or has been the subject of any legal action or investigation which might put into question the integrity of the controller.
- b) if there is a significant deterioration in the financial position of a controller.
- c) if a corporate controller undergoes a substantial change or series of changes in its governing body.
- d) if a controller, who is authorised in another EEA State as a MiFID investment firm, CRD credit institution or UCITS management insurer or under the Insurance Directives or the Insurance Mediation Directive, ceases to be so authorised (registered in the case of an IMD insurance intermediary).

Upon receipt of such a notification or if information is obtained through other means – for example a whistle-blower's report or intelligence received from other regulators the PRA would reassess the fitness and propriety of a qualified shareholder.

What improvements can be made to the PRA's practice to implement ongoing assessment of qualifying shareholders' propriety

The PRA's practice relies heavily on the insurer to report the relevant matters. The insurers' obligation is restricted to the situations where the insurer "becomes" aware of the matters noted in the legislation. The reporting obligation would normally be restricted to insurer becoming aware of the matter *during the normal course of business* and would not require the insurer to establish any policy and procedure to determine the existence of or absence of the listed matters. The scope of the reporting obligation appears to be restricted to legal action, investigation or cessation of authorisation. The following improvements can be made to strengthen the practice to ensure ongoing assessment:

- a) Adopting a proactive approach thereby requiring a sample of insurers, selected using a risk-based approach, to notify if there were any reportable matters.
- b) Obtaining information, whenever the need arises, about propriety of qualifying shareholders directly from other sources e.g. auditors under Article 72 or the qualifying shareholders under Article 19.
- c) Independently verifying some of the information, by following a risk-based approach.



DIRECT ENGAGEMENT WITH QUALIFYING SHAREHOLDERS – AS IMPLEMENTED BY THE NATIONAL BANK OF BELGIUM (NBB), BELGIUM

In September 2017 the NBB issued new guidelines for the assessment of qualifying shareholders which implement the last Joint guidelines issued by the European NCAs in December 2016 and these guidelines already include a reinforcement of the NBB's requirements concerning ongoing assessment of existing qualifying shareholders. More precisely, on 22 September 2017 the NBB issued two new guidelines:

- a) communication 2017-22 to persons intending to acquire, increase, reduce or transfer a qualifying holding in the capital of a financial institution and to persons owning a qualifying holding.
- b) circular 2017-23 to financial insurers on acquisitions, increases, reductions and transfers of qualifying holdings.

One of the differences between circular 2017-22 and the 2009 version, which was applicable during the Reference Period of the Peer review, is the fact that in point 6 of this circular, the NBB has now emphasised the importance of the ongoing assessment of the qualifying shareholders and have included a specific form called the “*new elements form*” to be filled in by existing qualifying shareholders in order to inform the

NBB of any new elements which may have an impact on the prudential assessment of their profile.

What improvements can be made to the NBB's practice to implement ongoing assessment of qualifying shareholders' propriety

The following improvements can be made to strengthen the practice to ensure ongoing assessment:

- a) The scope of the integrity related matters may be broadened to bring it in line with integrity aspects listed in the new joint guidelines.
- b) Adopting a proactive approach by requiring a sample of qualifying shareholders, selected using a risk-based approach, to notify if there were any reportable matters;
- c) Obtaining information about propriety on qualifying shareholders directly from other sources e.g. auditors under Article 72 or the qualifying shareholders under Article 19.
- d) Verifying some of the information, by following a risk-based approach.

ANNEX 4: KEY ATTRIBUTES OF A ROBUST (FITNESS AND) PROPRIETY FRAMEWORK

A robust regulatory framework is essential for the fit and proper regime to operate successfully and to support the delivery of effective fit and proper outcomes.



KEY COMPONENTS

In order to achieve the fit and proper vision, each of the four **key components** for the fit and proper regime is detailed below.



Desired outcome: A robust regulatory framework for the operation of the fit and proper regime.

Key considerations

- the regulatory framework is aligned with the European framework and consists of primary and secondary legislation, binding statutory codes and non-binding guidance.
- NCA has the power to decide the scope of the roles that need to comply with fit and proper requirements and the roles whose appointments should be notified to the NCA.

- the regulatory framework stipulates whistleblowing provisions and legal power for the NCA to remove persons not considered fit and proper or revoke license or authorisation.
- clear and concise guidance for insurers and candidates that shall be sufficient to enable a comparison of the supervisory approaches adopted by NCAs of the different countries – as required by Article 31 of the SII Directive.
- there are no impediments for the NCA in receiving relevant fit and proper information from other national authorities or other NCAs.
- consider arrangements: whereby insurers – in their capacity as the new and previous employers - can exchange fit and proper information (e.g. regulatory references framework, UK).
- include scoping and possible introduction of requirements regarding the individual accountability of persons (e.g. statement of responsibilities framework, UK).
 - NCA is able to legally suspend or put assessment of on hold under certain circumstances (e.g. under certain conditions involving judicial proceedings as national law provides for, LI)
 - Ability to grant conditional approval (e.g. conditional approval that triggers re-assessment on occurrence of certain events, RO)
- to have the legal authority to consult other authorities for information or have direct access to other authorities' sources of information (CZ, ES, NL) and attend joint interviews with NCAs where the NCA is not an integrated authority for supervision of all financial services sectors (NL).



Desired outcome: A collaborative and integrated approach to the development and implementation of effective fit and proper policies, procedures and practices.

Key considerations

- develop a Protocol by clearly defining roles and responsibilities of internal stakeholders (e.g. supervisory, Legal, Enforcement and IT departments).
- development of fit and proper policies, procedures and practices to drive efficiencies and assist in achieving consistency amongst different departments in how they participate in implementing the fit and proper regime.
- develop policies and procedures for cross-border cooperation requests (inwards and outwards).
- determine:
 - whether to use European sources of information (e.g. European criminal record) during the assessment (DE).
 - maintain supervisory records that readily identify facts relating to nature and circumstances of refusals and withdrawals for future assessments or cross-border cooperation (IE).

- whether in enforcement cases, use of e-discovery software would be beneficial as it allows the NCA to search thousands of documents in a discovery process within a short amount of time (IE).



Desired outcomes: *Highly visible, well understood and well regarded fit and proper regime achieved through clear, consistent and strategic communications and messages that engender trust and confidence.*

- › identify key target audiences.
- › identify high level communications aims (inform public reporting on fit and proper objectives, outcomes and priorities).
- › define key fit and proper messages.
- › identify and prioritise available communication channels.



Desired outcome: *fit and proper embedded in NCA's engagement with insurers, individuals and other stakeholders.*

Key considerations

Supervisory engagement plan reflects activities that clearly focus on fitness and propriety as a matter of ongoing activities rather than only at the time of appointments or notification of fitness and propriety issues. In particular, focus should be whether:

- › organisation structures and job descriptions are clear?
- › insurers know what they are expected or required to do?
- › design of policies and procedures is effective and consistent with the guidance issued by the NCA?
- › conflicts of interest are managed by insurers?
- › remuneration plans can be a source of fit and proper issues?
- › there were any issues that required reporting by insurers – whether insurers complied with the reporting requirements to the NCA?
- › fitness and propriety assessments completed by insurers are robust and stand up to independent verification of facts and evidence used by insurers to arrive at their decision?
- › independent verification takes place of some of the evidence used in assessment?

- the wider supervisory engagement with insurers informs the fit and propriety assessments by the NCA (e.g. supervisory breaches, governance issues etc.)?
- NCA has a policy to identify which cases require in-depth fitness and propriety investigation by enforcement department?

STRATEGIC ENABLERS

The fit and proper Strategic framework requires the support of important elements referred to as **strategic enablers** in order for the Framework, as a whole, to perform successfully. The strategic enablers facilitate the NCA in achieving the strategic objectives. These are:

Governance and
Decision-Making

People and Skills

Systems and Information

- a. **Governance and Decision Making** – An effective and efficient governance structure supports the implementation of fit and proper framework.
- b. **People and Skills** – Implementation of fit and proper framework is supported by personnel with required knowledge and skills. Where gaps in knowledge and skills or areas for upskilling are identified, training may be developed.
- c. **Systems and Information** – Knowledge and information that is of a high standard and easily accessible to internal stakeholders will support fit and proper decision making and cross-border cooperation. The storage of information and data is secure, run efficiently and cognisant of the NCA's statutory obligations under GDPR and relevant data protection legislation.

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**EUROPEAN INSURANCE AND
OCCUPATIONAL PENSIONS AUTHORITY**

Westhafenplatz 1,
60327 Frankfurt am Main, Germany

