

IMPACT ASSESSMENT ON THE EIOPA OPINION ON THE USE OF RISK-MITIGATION TECHNIQUES BY INSURANCE AND REINSURANCE UNDERTAKINGS

EIOPA-BoS-21/037
11 June 2021



eioipa

European Insurance and
Occupational Pensions Authority

Procedural issues and consultation of interested parties

1. In accordance with Article 29 of the EIOPA Regulation¹, where relevant, EIOPA carries out analyses of costs and benefits during the policy development process. The analysis of costs and benefits is undertaken according to an impact assessment methodology.
2. This impact assessment covers the EIOPA Opinion on the use of risk-mitigation techniques by insurance and reinsurance undertakings. It is based on a qualitative assessment done by EIOPA, taking into account the comments received from stakeholders during the public consultation, which led to significant improvements in the text of the Opinion.

Problem definition

3. Since the inception of Solvency II, some new reinsurance structures or reinsurance structures that were not widely present in the European market started to gain relevance. Some of these structures are complex or present intricate interactions with the Solvency II Standard Formula.
4. Each National Competent Authority has done until now its own assessment of the adequacy of this reinsurance structures and whether they comply with the requirements of Solvency II for risk mitigation techniques, in particular regarding the efficiency of the risk transfer.
5. Solvency II includes several requirements that ensure that the risk profile of the undertaking does not significantly deviate from the underlying assumptions of the Standard Formula. Reinsurance structures can have a material impact on the risk profile of the undertaking and, therefore, in some cases they can be very important for this assessment. The lack of a comprehensive description in the Solvency II framework of how reinsurance structures can be relevant for this assessment led to different interpretations. Moreover, the different level of resources and reinsurance-specific knowledge available in each National Competent Authority also contributed to the existence of divergent assessments of similar reinsurance structures.

Objectives pursued

6. Reinsurance is a key element of insurance business with several benefits, including risk-mitigation and capital management among others. For this

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC; OJ L 331, 15.12.2010, p. 48–83.

reason, EIOPA considers ensuring a consistent treatment of reinsurance structures across Europe to be of utmost importance.

7. This Opinion pursues this objective from two angles. From one side, EIOPA intends to clarify the application of the existing requirements within the Solvency II framework. Further, EIOPA has advised the European Commission to address this issue in the revision of the Delegated Regulation².
8. To achieve this first part of the objective, the Opinion clarified the relevant elements to be considered while assessing whether a risk mitigation technique provides an efficient transfer of risk. In particular, the Opinion links this requirement with other existing provisions in the Solvency II framework, mainly the assessment whether the risk profile of the undertaking significantly deviates from the assumptions underlying the calculation of the SCR.
9. From the other side, with this Opinion EIOPA also provides clear guidance to all National Competent Authorities on the assessment of reinsurance structures. This should help National Competent Authorities to make more efficient use of their limited resources and to ensure a convergent assessment of reinsurance structures across Europe.
10. To achieve this second part of the objective, the Opinion highlights the key elements to be considered when assessing risk mitigation techniques and mentions some examples of reinsurance structures that are more complex or present an intricate relation with the Standard Formula and may deserve in some cases additional supervisory attention, highlighting the relevance of a case-by-case analysis.
11. Finally, the Opinion sets out some recommendations on good practices already in place in several Member States, as the ongoing communication between National Competent Authorities and undertakings regarding reinsurance structures that are more complex or present an intricate relation with the Standard Formula, or the coordination among National Competent Authorities when assessing reinsurance structures that are relevant across multiple jurisdictions.

Policy Options

12. With the aim to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process, in particular whether an EIOPA Opinion should be issued.
13. The following policy options have been identified:

² Section 5.7 of the [EIOPA Opinion on the 2020 review of Solvency II](#), paragraph 3.2.

1. **Policy option 1.** Issuing the Opinion on the use of risk-mitigation techniques by insurance and reinsurance undertakings.
2. **Policy option 2.** Keeping the status quo, i.e. not issuing the Opinion.

Analysis and impact of policy options

Policy option 1. *Issuing the Opinion on the use of risk-mitigation techniques by insurance and reinsurance undertakings.*

14. Some divergent approaches towards the assessment of reinsurance have been observed and, therefore, this Opinion is expected to have an impact in some cases. However, this impact is necessary to ensure convergence: where the same reinsurance structures are being treated differently in different markets, the only way to promote convergence requires that the treatment changes at least in some of these markets.
15. The scope of the Opinion encompasses all reinsurance structures, even if some of them, in particular the most complex ones and those that have an intricate interaction with standard formula, may be particularly affected. EIOPA has observed different approaches regarding the recognition of these particular reinsurance structures as risk-mitigation techniques across Europe and expects that this Opinion may influence the assessment in the future.
16. It is not the intention of this Opinion to increase or to reduce the recognition of reinsurances structures as risk-mitigation techniques, but to ensure a consistent recognition across Member States. In some cases, this may lead to further recognition of reinsurance structures as risk mitigation techniques; while in other cases it may lead to a lower recognition. The final impact cannot be estimated from the information in the QRTs and it could not be estimated from an ad-hoc information request until all stakeholders, undertakings and National Competent Authorities, have analysed the Opinion and adapted their assessments where necessary.

Policy option 2. *Keeping the status quo, i.e. not issuing the Opinion.*

17. This option has the lowest impact since it does not require any change from stakeholders as no clarifications would be published. However, it fails to address the existing divergent practices that hamper the level playing field, which could be particularly relevant in case of activities performed through freedom of establishment or freedom of services. Indeed recognition of reinsurance structures as risk-mitigation techniques might differ from the Home supervisor and the Host supervisor, which could lead to different Solvency Capital Requirements for the same undertaking.
18. This lack of convergence also creates a handicap for reinsurers that may see how some of their products have higher or lower acceptance among direct insurers only depending on the treatment of the reinsurance structure for Solvency II purposes in their home Member State.

Comparison of options

19. The following table shows the main costs and benefits for EIOPA stakeholders:

Policy issue: Issuing the Opinion vs status quo		
Option 1: Issuing the Opinion		
Costs	Policyholders	None
	Industry	Some undertakings may need to do some adjustments regarding process to assess the recognition of some reinsurance structures as risk mitigation techniques. However, this is unavoidable when addressing divergent practices.
	Supervisors	Some supervisory authorities may need to do some adjustments regarding reinsurance supervision to be aligned with the Opinion. However, this is unavoidable when addressing divergent practices.
	Other	None
Benefits	Policyholders	More consistent level of protection across Europe.
	Industry	Enhanced level playing field and consistent supervision across Europe.
	Supervisors	Clearer guidance facilitating the level playing field and a common understanding with the industry.
	Other	None
Option 1.2: No change		
Costs	Policyholders	Different level of protection depending on the interpretation of SII principles in each jurisdiction.
	Industry	Different interpretations in different markets, hampering the level playing field and creating challenges for undertakings operating in several markets, in particular for reinsurance undertakings.
	Supervisors	Different interpretations of some provisions complicates reaching a common understanding with the industry, in particular with undertakings operating in several markets.
	Other	None
Benefits	Policyholders	None
	Industry	None
	Supervisors	None
	Other	None

20. EIOPA believes that without the Opinion divergent practices will remain and issuing this Opinion is an efficient tool to address this issue as shown in the cost/benefit analysis above. For these reasons, Option 1 is preferred.