

REPORT ON EIOPA SUPERVISORY ACTIVITIES IN 2021

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CONTENTS

Executive Summary	3
1.1. Building common benchmarks for supervisory practices	5
1.1.1. Implementation of the common supervisory culture and further development of supervisory tools	5
1.1.2. Risk to the internal market	11
1.1.3. Supervision of emerging risks	15
1.2. EIOPA's own independent assessment	21

EXECUTIVE SUMMARY

EIOPA's supervisory convergence plan identifies, in line with EIOPA's mandate, EIOPA's annual priorities to enhance supervisory convergence by ensuring a high, effective and consistent level of supervision across Europe, with the aim of guaranteeing a similar level of protection of policyholders and beneficiaries across jurisdictions, preventing supervisory arbitrage and guaranteeing a level playing field.

This Report presents how EIOPA contributed during 2021 to enhance the common European supervisory culture and promoted consistent supervisory practices both from a prudential and conduct of business supervision perspective.

In particular, EIOPA encouraged supervisors and insurers to make use of the flexibility embedded in the existing regulatory framework and issued some supervisory statements in 2021 to deal with the new risks caused by the pandemic:

- ▶ Assessment of value for money of unit-linked insurance products under product oversight and governance¹ which highlights that while value for money is embedded already within product oversight and governance requirements, more convergence is needed in practical supervisory implementation.
- ▶ Own Risk and Solvency Assessment (ORSA) in the context of COVID-19 pandemic² that focuses on the supervision of the internal processes of undertakings that are necessary for detecting possible changes in the risk profile pandemic triggered by the pandemic ; and
- ▶ Supervisory practices and expectations in case of breach of the solvency capital requirement³ promoting addressing the recovery plan required in case of breach of the Solvency Capital Requirement (SCR).

Additionally, EIOPA published the following opinions:

- ▶ Opinion on the use of risk mitigation techniques by insurance undertakings that raises awareness about the importance to have a proper balance between the risk effectively transferred and the capital relief in the Solvency Capital Requirement.

¹ [Supervisory statement on assessment of value for money of unit-linked insurance products under product oversight and governance | Eioipa \(europa.eu\)](#)

² <https://www.eiopa.europa.eu/document-library/supervisory-statement/supervisory-statement-orsa-context-of-covid-19>

³ <https://www.eiopa.europa.eu/document-library/supervisory-statement/supervisory-statement-supervisory-practices-and-expectations>

- ▶ Opinion on the supervision of the use of climate change risk scenarios in ORSA to set out expectations on the supervision of the integration of climate change risk scenarios by insurers in their ORSA.

In 2021, together with other initiatives, EIOPA's focused on new areas from a supervisory convergence perspective such as Environmental, Social and Governance risks, SupTech and supervision of run-off portfolios. In the area of Solvency II, following lessons learned from supervisory practices as well as work done in relation to the Solvency II review, the EIOPA Guidelines on Technical Provisions and Contract Boundaries were reviewed and amended and the Supervisory Chapter on supervision on Intra-Group Transactions and Risk Concentrations was developed.

On conduct risks, following a delay due to the re-prioritisation of some activities due to COVID-19, EIOPA has carried out monitoring work on the implementation of the Warning on travel insurance products issues following the publication of the Thematic Review on Consumer Protection Issues in Travel Insurance. Furthermore, EIOPA continued developing its Supervisory handbook releasing some new chapters in the area of conduct supervision and data governance.

In 2021, EIOPA continued providing training on insurance supervision under Solvency II to individual NCAs in accordance with the agreement signed in 2020 with European Commission, via the Directorate General for Structural Reform Support (DG REFORM). In total, 11 online training were organised for 13 NCAs, in which 487 supervisors participated.

In the course of the year, conduct of business supervision has become a fundamental pillar of supervision, using EIOPA's product intervention powers and a range of supervisory and oversight tools, as well as active engagement with and visits to national competent authorities (NCAs) and third-country parties.

EIOPA continued to work on home-host cross-border cases that may possibly cause detriment to consumers, via the establishment of cross-border cooperation platforms and by using its available tools to coordinate appropriate supervisory actions by NCAs. During 2021, eleven cooperation platforms were operational with the involvement of 23 NCAs. The cooperation platforms are active as long as the risks identified raise concerns about the appropriate level of protection of policyholders. Many actions and measures were taken and implemented in 2021 with the aim to conduce to timely supervisory actions to the benefit of consumers. For some of the platforms the intensive cooperation is continuing into 2022.

EIOPA issued in mid-2021 an individual recommendation to an NCA to take supervisory actions against an undertaking which pursues cross-border business in several Member States on the basis of a home-host relationship. In the second half of 2021 EIOPA concluded non-compliance with this recommendation. This case as well as other still ongoing cases , highlight limitations in the European supervisory architecture to appropriately protect consumers within the internal market. Finally

EIOPA also received its first request to initiate an inquiry into specific concerns related to group supervision in a specific Member State.

1.1. BUILDING COMMON BENCHMARKS FOR SUPERVISORY PRACTICES

The report on supervisory activities describes the most important deliverables achieved in 2021, including a review of the priorities in the field of supervisory convergence to take stock of emerging and future challenges.

1.1.1. IMPLEMENTATION OF THE COMMON SUPERVISORY CULTURE AND FURTHER DEVELOPMENT OF SUPERVISORY TOOLS

Risk assessment framework (RAF) and application of proportionality

[Supervisory convergence plan reference: 1a]

- ▶ *Following up on the advice on the 2020 review of Solvency II, EIOPA intends to continue working on this topic to prepare the support of the future proportionality framework by further developing regulatory work in the form of future EIOPA's Guidelines that will include operational guidance for the application of the new framework on Proportionality;*
- ▶ *EIOPA will continue to promote a common understanding of the principle of proportionality and a culture of implementation and transparency of proportionality by national supervisory authorities and assess the need for further supervisory convergence tools to complement the regulatory work.*
- ▶ *EIOPA will also develop preparatory work for the future development of a regular Report on implementation of Proportionality in Solvency II.*

Following the publication of EIOPA Opinion on the 2020 review of Solvency II in December 2020, EIOPA continued carrying out internal preparatory work intended to facilitate the future implementation of the new framework on proportionality in the supervisory review process, once the review of Solvency II will be in place.

In particular, EIOPA has further clarified the concrete implementation of some of the criteria identifying the new category of "small and non-complex undertakings" (e.g. how to apply the criteria to composite undertakings)⁴ and has started discussing the supervisory assessment recommended to allow the use of the proportionality principle by small and non-complex

⁴ Such clarification were included in COM Proposal to amend Solvency II Directive published in September 2021.

undertakings for which pre-defined criteria was not proposed for the Directive or Delegated Regulation.

EIOPA has deprioritised the preparatory work on the Report on implementation of Proportionality in Solvency II due to the on-going political discussions on this area.

- ▶ *Follow up on the peer review on the supervisory practices for the application of the proportionality principle in governance requirements regarding key functions.*⁵

EIOPA completed the follow up of the peer review on the supervisory practices for the application of the proportionality principle in governance requirements regarding key functions. The follow-up report, approved in June 2021, describes to what extent the National Competent Authorities (NCAs) have implemented the recommended actions addressed to them as a result of the peer review finalised at the end of 2018. In addition, it addresses the monitoring of how the best practices, as identified in the peer review, have been taken into consideration, implemented or further developed by the NCAs.

The follow-up exercise identified that twelve NCAs had fully implemented their recommended actions and six NCAs had partially fulfilled the recommended actions addressed to them. Of the 38 recommended actions followed up, 24 (63%) were fulfilled whereas 14 (37%) were partially fulfilled. At the end of 2021, EIOPA has started the monitoring of unfulfilled or partially fulfilled recommendations.

Common benchmarks for the supervision of internal models

[supervisory convergence plan reference: 1b]

- ▶ *IMOGAPIs (Internal Model On-Going Appropriateness Indicators): further development of the dashboard, in order to address potential drawbacks and weaknesses allowing it to be used by NCAs for supervision;*
- ▶ *Reporting requirements for internal models: contribution to the amendments to the ITS on reporting to ensure convergence in the interpretation of the new requirements.*

EIOPA continued discussions on on-going appropriateness indicators (IMOGAPIs) for the monitoring of internal models over time and across undertakings. The main objective is to support local supervisory tasks and activities with a common supervisory tool for the follow-up of developments of internal models (e.g. to identify potential outliers). Building on the prototype tested, a first version of the tool was released in 2021 with the aim to further improve it in the following years.

⁵ For additional information, see EIOPA's Peer review work plan 2020-2022

During 2021 EIOPA has continued to contribute to the amendments to the Implementing Technical Standard on supervisory reporting where new specific templates, based on the experience of several National Supervisory Authorities, were introduced to allow analysis of internal models across undertakings and as such complement the already existing comparative studies.

Since 2018, EIOPA has been producing annual internal model statistics and analysis, providing national supervisors with a comprehensive overview of internal model users in the European market (Internal Models Dashboard). Once the new information starts to be received (starting with reference period of end-2023) the comparative studies and internal models statistics and analysis will be enhanced.

Supervisory assessment of conduct risks

[supervisory convergence plan reference: 1c]

- ▶ *Final follow-up of the thematic review on travel insurance and the warning to the industry on high commissions including analysis of the outliers and discussion of potential supervisory measures, also in light of the risks emerged because of the COVID-19 pandemic;*
- ▶ *Continue working on developing a common conduct risk assessment, including by working on a chapter of the Supervisory Handbook;*
- ▶ *Address key risks stemming out of some product and contract structures and complexity also in light of the COVID-19 pandemic (product complexity, high fees, lack of clarity in contracts);*
- ▶ *Finalising the Supervisory Handbook Chapter on the supervision of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key information documents (KIDs).*

Following the publication of the Thematic Review on Consumer Protection Issues in Travel Insurance and the Warning issued by EIOPA, monitoring work has been carried out on the implementation of the Warning by providers and on emerging issues from travel insurance products. EIOPA identified insurance undertakings with outlying patterns and asked NCAs to follow up to determine whether products generated consumer detriment and/or whether actions had been taken following the Warning. This work was originally planned for 2020 but it has been delayed due to the re-prioritisation of some activities due to COVID-19.

Moreover, considering the emergence of travel insurance related issues in light of the pandemic, EIOPA carried out a behavioural research to understand consumers' habits in buying travel insurance in a 'post-pandemic' world and assessed relevant risks. This highlighted some issues in relation to exclusions and work is planned for 2022 not only in relation to travel insurance. The follow up to the thematic review is expected to be finalised in 2022.

In addition, in 2021 EIOPA significantly advanced on its thematic review on mortgage protection and other credit protection insurance products (CPI) sold via banks. EIOPA collected data from both insurance undertakings and banks (as distributors of CPI) via two Industry Questionnaires in 2021

and carried out an in-depth data analysis. In addition, input has been collected from external stakeholders on the products in scope of the thematic review and potential issues that may need to be addressed. The thematic review will be finalised in Q2 2022 and the final report is planned for publication in Q3 2022. Follow-up work to the thematic review will be carried out as relevant.

In addition to the study on travel insurance, which also covers exclusions and clarity in terms and conditions, EIOPA launched a study on exclusions and contract clarity in relation to Nat Cat, which aims at understanding demand-side drivers of why consumers may not be buying Nat Cat coverage. It also followed up with NCAs on the activities they carried out on exclusions and contract simplicity. Considering the synergies across the different activities, EIOPA agreed with NCAs this work will continue in 2022 and 2023 and will explore product oversight and governance related aspects of exclusions, based on the work NCAs are already doing. Furthermore, in a pilot exercise, EIOPA is also collecting potential evidence on product design and pricing in light of climate change, to incentivise adaptation measures for climate related risks, consistently with actuarial risk-based principles.

EIOPA actively continued its work to monitor, identify, and address conduct risks. In 2021 EIOPA updated its Retail Risk Indicator methodology, which has been published in December 2021. EIOPA has also enhanced the methodology to develop its annual heat-map, which highlights the main trends and risks for consumers and the outlook. Similarly, EIOPA has also engaged actively with NCAs on the development of a Conduct Risk-Assessment Framework, including via DG REFORM project focused on conduct risk assessment.

In relation to COVID-19, in 2021 EIOPA carried out a detailed analysis of claims data (e.g., claims ratios, claims paid) which identified undertakings showing outlying patterns and for which possible conduct risks (e.g. change in product utility and/or issues relating to exclusions) emerged. As part of its discussion on the implementation of the Union-wide strategic supervisory priorities it asked NCAs to report back on activities performed in relation to undertakings showing those outlying patterns. Market shocks such as the COVID-19 crisis highlighted the need to continue monitoring emerging business conduct risks with possible negative impacts on consumers.

EIOPA also continued to work on cross-border cases with possible detriment to consumers. In particular, the work on cross-border cases leveraged on the product oversight and governance (POG) framework to address product related risks.

In 2021, EIOPA actively worked on addressing issues relating to high fees and poor value for money in the unit-linked market. In particular, it issued a Supervisory Statement on assessment of value for money of unit-linked insurance products under product oversight and governance and work with stakeholders and members on developing a model to measure value for money. Considering the significant challenges in developing a single model due to the high diversity of the market, at the end of 2021 EIOPA began working on a methodology which mixes a qualitative and quantitative approach to address value for money. This is expected to be finalised in 2022.

While the value for money supervisory statement already addresses complexity, in light of the COM call for advice on the Retail Investment Strategy, EIOPA also leveraged on its supervisory knowledge to provide concrete inputs on how to promote simplicity.

Regarding the Supervisory Handbook, EIOPA after having finalised its work on the conduct of business chapters for the Supervisory Handbook on Product Oversight and Governance (POG) requirements and on the supervision of disclosures with a particular focus on the PRIIPs Key Information Document, a new Chapter on how to identify, monitor and prioritise amongst conduct risks was initiated at the end of 2021 and is currently under preparation.

Supervisory approach to environmental, social and governance (ESG) risks

[Supervisory convergence plan reference: 1d]

EIOPA has developed a new chapter for its Supervisory Handbook on the supervision of climate change risks, which aims at providing recommendations for supervisors as well as examples and case studies. Furthermore, EIOPA consulted on practical guidance to assess the materiality of climate change risks and perform scenario analysis as part of the insurers' Own Risk and Solvency Assessment.

The scope of the chapter is to initially address the supervision of impact of climate risks on undertakings' system of governance, including the role of the Administrative, Management and Supervisory Body and supervision of prudent person principle.

With the adoption of this first version of the chapter, EIOPA intends to set the scene for the supervision of climate-change risks but acknowledges that more work is needed. An update of the chapter is planned after one year in order to reflect more practical experience.

EIOPA also included ESG related product in its annual Costs and Past Performance Report.

Group Supervision

[Supervisory convergence plan reference: 1e]

- *Good practices on the treatment of own funds of the related undertakings that fall under the category of other financial sectors and for which sectorial rules apply, and interconnection with the Financial Conglomerates Directive and Regulations;*
- *Good practices on the supervision of intra-group transactions (IGT) and risk concentrations;*
- *Good supervisory practices on the application of combination of methods in the calculation of the Group Solvency;*
- *Further improve the reporting requirements for groups in the amendment to the ITS on Reporting to ensure convergence in the interpretation of the requirements.*

Concerning the selection of some good practices for the supervision of the treatment of own funds from other financial sectors⁶, EIOPA has started the process of reviewing and updating the relevant

⁶ The work also includes including own funds of the related undertakings that fall under the category of other financial sectors and for which sectorial rules apply, and interconnection with the Financial Conglomerates Directive and Regulations

chapter on the group solvency calculation of its Supervisory Handbook taking advantages of the additional analysis carried out for the Opinion on the Solvency II review.

Regarding the supervision of intra-group transactions (IGT) and risk concentrations (RC), a new chapter of EIOPA Supervisory Handbook was finalised. This chapter aims to ensure that supervisors have a common understanding and assessment of IGTs and RCs, which is one of the core aspects of the group supervision under Solvency II. In some cases the supervision of IGTs is the only/maximum level of group supervision that could be carried out and as such should be done with high standards and supervisory convergence is crucial.

On the application of combination of methods in the calculation of the Group Solvency, EIOPA has developed a technical document intended to support the concrete application of the combination of methods included in EIOPA Opinion on Solvency II 2020 review. The document is expected to be finalised once the review of Solvency II Directive will be finalised.

The Implementing Technical Standards on supervisory reporting and public disclosure included a revision of the group templates with a focus on the intra-group transactions and risk concentrations templates. The revision reflected on lessons learned from supervision of IGTs and RC over the last years, some of them already reflected in the templates developed for the technical standard for reporting by financial conglomerates. The revision of Solvency II considered those lessons in light of the specificities of the insurance business.

Supervisory Technology (SupTech)

[supervisory convergence plan: 1f]

- ▶ *Monitor the appropriateness of the code sharing platform to be presented in early 2021 for the on-going exchange of knowledge and experience on SupTech tools implemented by NCAs to promote a culture of innovation and initiative between supervisors.*

By the end of 2021 EIOPA will assess whether the use of a more sophisticated tool for the information sharing would be needed.

Following up the SupTec Strategy published by EIOPA in February 2020, EIOPA has started a project aiming at improving the consistency of the register of insurance undertakings published by single NCAs and the centralised register published by EIOPA, in particular regarding the information on cross-border activities via freedom to provide services.

After an initial proposal based on a Blockchain-based solution, EIOPA decided to further analyse different alternatives and identified three 'innovative' alternatives (Blockchain, Microservices & Webservices and an event-based streaming platform) and one 'traditional' solution (web interface). After assessing the costs and benefits the 'traditional' solution was considered the most effective and efficient and the Analysis phase project is on-going. The finalisation of this phase is planned to end by 2022 year-end.

- ▶ *Launch a pilot using supervisory technology to assess conduct risk: In 2020 EIOPA explored options to use technology to collect and to analyse KID's data and also further enhanced its data work to assess conduct risks. In 2021 EIOPA will carry out at least one pilot on how to use supervisory technology to identify and possibly predict conduct risks.*

EIOPA started exploring a solution that could address data quality or data availability issues on the side of conduct supervision, including gaining reliable and actionable insights from data generated for other purposes. In particular, EIOPA explored possible options on the market to develop a PRIIPs KID tool, which is expected to allow for more efficient data collection, without additional burden on industry or NCAs, while improving the quality of product analysis, and enhancing market transparency for supervisors. The project is on-going and further developments are expected in 2022.

Training on insurance supervision under Solvency II

[supervisory convergence plan: 1g]

In 2021, EIOPA continued providing training on insurance supervision under Solvency II to individual NCAs in accordance with the agreement signed in 2020 with European Commission, via the Directorate General for Structural Reform Support (DG REFORM).

Due to COVID-19 related issues, all training were delivered in virtual format, as done in 2020. Particularly, EIOPA provided 11 training to 13 NCAs (with one joint training for 3 NCAs due to similarities in their markets). NCAs could opt for a 3-day default programme, which covered Solvency II Pillar I and Pillar II topics and optional modules (each of 1-day) on group supervision and internal models. In addition, NCAs could request specific topics or subtopics on issues relevant to their market and needs.

In total in 2021, the training was delivered to 487 supervisors by 24 speakers from EIOPA, COM and NCAs.

1.1.2. RISK TO THE INTERNAL MARKET

Calculation of Technical Provisions

[supervisory convergence plan reference: 2a]

- ▶ *Continue working on (new and amended) Guidelines on Best Estimate Valuation and Guidelines on Contract boundaries;*
- ▶ *Revision of the technical provisions chapter of the supervisory handbook;*
- ▶ *Further analysis of situations and assumptions leading to negative Technical Provisions and assessment of Expected Profits Included in Future Premiums (EPIFP).*

During the preparation of the input for the Solvency II 2020 review, which led to the Opinion on the review of Solvency II in the area of calculation of Technical Provisions, EIOPA has identified some

additional divergent practices that didn't need amendments of Level 1 or Level 2 legislation, but instead should be addressed from a supervisory convergence point of view, through the revision of the EIOPA Guidelines on Technical Provisions and Contract Boundaries. In order to address such inconsistency, EIOPA consulted in July 2021 (until November 2021) some amendments the existing Guidelines on Technical Provisions and Contract Boundaries. As a result, EIOPA has revised its Guidelines on Contract Boundaries and Guidelines on the Valuation of Technical Provisions to provide additional guidance by issuing new guidelines and amending some current guidelines on a limited number of topics considered crucial from a supervisory convergence perspective. These include Modelling Biometric Factors, the Apportionment of Expenses, Changes in Expenses, Assumptions used to calculate Expected Profits in Future Premiums and the Unbundling of contracts. The final revised set of Guidelines were published in April 2022.

Assessment of internal model outcomes

[supervisory convergence plan reference: 2b]

- ▶ Perform comparative studies on the outcomes of Internal Models regarding underwriting risks for main non-life lines of business (NLCS); market and credit risk (MCRCS) and modelling of diversification benefits in Internal Models (DIV).

Internal Model Comparative Studies contribute to EIOPA's objective of supervisory convergence regarding Solvency II internal models. EEA-wide studies are valuable tools complementing individual internal model analyses and studies at national level. EIOPA simultaneously conducted three studies related to internal models.

Non-Life Underwriting Risk Comparative Study in Internal Models (NLCS)

Leveraging on the lessons learned in the first edition and taking into account stakeholders' feedback EIOPA has kicked-off in 2021 the second edition of the Non-Life Underwriting Risk Comparative Study in Internal Models (NLCS 2020).

The objective of the NLCS 2020 is to analyse the relative positioning of non-life internal models to provide a European perspective for their risk profile developments, over a time horizon of five years (from 2016 to 2020). In depth analyses are expected particularly for selected lines of business (motor, fire and general liability and credit and suretyship).

Final results from the Non-Life Underwriting Risk Comparative Study are expected in the second half of 2022.

Market and Credit Risk Comparative Study (MCRCS)

EIOPA performs a regular comparative study on the market and credit risk within internal models. The objective of the study is to compare risk charges for a selection of financial instruments and benchmark portfolios to be used as a tool for the supervisory review of internal models.

The Study published in 2021 (considering 2020 year-end data) remained close to the structure of the previous exercises and included relevant aspects of risks associated with interest rates, exchange rates, credit spreads, equity and real estate.

In certain areas, the results showed sizeable variations between undertakings, with some cases requiring further review. In this context, supervisors have engaged (on some occasions partnering with EIOPA) with the undertakings in feedback discussions to better understand and evaluate the results at European level and assess whether follow up actions are required.

Study on Diversification in Internal Models (DIV)

In 2020, EIOPA launched a new comparative study on diversification in Internal Models which aims at analysing and comparing the levels of diversification to facilitate a better understanding of modelling dependencies, aggregation and resulting diversification benefits.

The study is being carried out in two phases to balance complexity and completeness. The first phase of the study, which started in October 2020, focusses on top-level risk dependencies between market, credit, life, non-life, health, and operational risks. During 2021, data from undertakings was gathered and a preliminary analysis was performed for this phase.

To complete the understanding of diversification effects, the lower level inter risk dependencies will also be assessed in 2022 in the second phase of the study. The aspects of Market and Credit risk and Non-Life underwriting risk have been developed in partnership with the above mentioned comparative studies to avoid unnecessary burden regarding double reporting and to foster consistency across EIOPA comparative studies.

The results from the Study on Diversification in Internal Models are expected in the second half of 2022.

Authorisations, fitness and propriety

[supervisory convergence plan reference: 2c]

- ▶ *In the context of the implementation of new Article 31a of the ESAs regulation, EIOPA will continue working with the other ESAs to set up a cross sectoral system for information exchanges regarding assessments of AMSB members, Qualifying shareholders and other Key Functions Holders*

The ESAs review entered into force in January 2020 and introduced the Article 31(a) in the ESA regulations, foreseeing the establishment of a system for the exchange of information relevant to the assessment of the fitness and propriety by competent authorities, in order to improve a better exchange of information on relevant cross-border and/or cross-sectorial assessments.

The ESAs are working on the implementation of the requested system following a two-pronged approach, with an IT solution facilitating the information exchange by competent authorities, as well as accompanying joint guidelines and operational rules.

Pension issues

[supervisory convergence plan reference: 2d]

- ▶ *After the development of the Prudent Person Rule (PPR) Chapter of the IORPs' Supervisory handbook on PPR expected in 2021, EIOPA will initiate work on supervisory practices and potential supervisory concerns arising from the recent market development of multi-employer IORP providers (i.e. IORPs established by service providers). The IORP II Directive provides minimum prudential requirements focusing largely on the traditional image of non-commercial purpose IORPs set up by a single sponsor or multiple sponsors of the same sector. Whilst multi-employer IORP providers have an important role to play to foster market consolidation and provide efficient, low-cost solutions in Member States seeking to develop occupational pensions, they may also bring new supervisory questions in respect of the governance (e.g. conflicts of interest, sponsor involvement) and risk management (e.g. operational DC liabilities, service continuity in case of business insolvency). This work will include fieldwork to better understand providers' different business models and NCAs' supervisory practices in respect of these IORPs and will take into consideration the proportionality principle.*

Due to other work priorities, EIOPA postponed its plan to initiate discussions with EIOPA members to work on the supervisory practices and potential concerns arising from the recent market development of multi-employer IORP providers (i.e. IORPs established by service providers) to 2022.

Third country reinsurance in the EU

[supervisory convergence plan reference: 2e]

- ▶ *EIOPA has identified inconsistencies in the way National Competent Authorities treat reinsurance undertakings with the head office located in third countries. EIOPA will further analyse the issue, identify potential risks to the internal market and, if any, develop adequate tools. Considering that this an area not fully regulated by the Solvency II Directive, legislative amendments may also be identified.*

Solvency II contains only high level principles on the treatment of reinsurance provided by undertakings with head office located in third countries. Indeed, it does not regulate the conditions for the access to the internal market by third-country reinsurance and only includes rules for their operations (Article 172 to 175 of the Directive⁷).

⁷ Article 172 of the Solvency II Directive only refers to the conclusion of reinsurance contracts while Article 174 lays down the principle of equal treatment (non-discrimination) requiring that the third-country reinsurers are not treated more favourable by a Member State than the reinsurance undertakings which have their head office in that Member State.

This leaves room for different national-specific provisions by the Member States, which may introduce restrictions on reinsurance provided by third country reinsurers. To analyse the issue, identify potential risks to the internal market and, if any, develop adequate tools EIOPA has started the relevant work at the end of 2021 (launching a survey to collect the current practices) and will be further considered by EIOPA in 2022.

1.1.3. SUPERVISION OF EMERGING RISKS

IT security and governance related risks, including cyber

[supervisory convergence plan reference: 3a]

- ▶ *Work on a system for the exchange between Competent Authorities (NCAs and ESAs) of information regarding cybersecurity and cyber-attacks;*
- ▶ *Contribute to the establishment of a Digital Operational Resilience Framework, following the publication of EIOPA Guidelines on ICT security and Governance and COM proposals on this area, with special focus to the cyber incident reporting and cyber resilience testing.*

On 1 July 2021 the EIOPA Guidelines on ICT security and Governance came into application and Member States provided to EIOPA their overview on the Comply or Explain (CoE) procedure for the application of the Guidelines into their jurisdictions (the compliance tables are available in the EIOPA website).

On the topic of Digital Operational Resilience overall, EIOPA followed COM proposals on this area, namely the issuance of the Draft Digital Operational Resilience Act (DORA) and assessed during 2021 ways forward towards the preparation for the application of the new Regulation to the (re)insurance and pensions market in the coming years.

As a first step towards the implementation of good practices on data management and to establish a basic foundation towards a data driven supervision, EIOPA has developed a framework for data governance addressed to NCA. The Data Governance Framework was approved by EIOPA February 2021 and was integrated as a new chapter in the Supervisory Handbook.

Digital Transformation

[supervisory convergence plan reference: 3b]

- ▶ *Develop a set of principles of digital responsibility. The principles will address the use of new business models, technologies and data sources in insurance from the perspective of fairness and taking into account ethical considerations.*

As a follow-up its 2019 thematic review on the use of Big Data Analytics in the motor and health insurance, EIOPA convened a Consultative Expert Group on Digital Ethics in insurance, which published a report on Artificial Intelligence (AI) governance principles in June 2021. The report is based on the cross-sectorial Ethics Guidelines for Trustworthy AI developed by the European

Commission's High Level Expert Group on AI and lays down a framework for an ethical and trustworthy AI in the European insurance sector.

In line with the well-established principle of proportionality in the European legislation, the report follows a risk-based approach to help stakeholders implement the relevant governance and risk management measures for the different AI use cases that they aim to implement within their organizations. The report, which is non-binding, has developed six AI governance principles, which are accompanied by additional guidance for insurance firms on how to implement them in practice in concrete AI use cases and throughout the AI system's lifecycle.

- ▶ *Participate and promote relevant discussions in the area on the insurance and pension sector in the European Forum of Innovation Facilitators (EFIF). The EFIF provides a platform for supervisors to meet regularly to share experiences from engagement with firms through innovation facilitators to share technological expertise and to reach common views on the regulatory treatment of innovative products, services and business models, overall boosting bilateral and multilateral coordination. EIOPA will continue to chair the EFIF during the first half of 2021*

In 2020 EIOPA took over chairmanship of the European Forum of Innovation Facilitators (EFIF)⁸ from the EBA and organised three (virtual) EFIF events in 2021 before handing over chairmanship to ESMA.

Besides an ongoing exchange amongst EFIF members about recent developments in the field of innovation facilitators, the forum had thematic discussions about 'Blockchain' and 'RegTech'⁹, exchanged views about recent developments and initiatives regarding innovation facilitators with some third country financial authorities and discussed perceptions around the establishment of regulatory sandboxes to facilitate FinTech and innovation.

Based on the discussions on how to further strengthen the EFIF and in order to address the fact that innovation facilitators in the EU operate on a national level only, it was agreed to put in place a dedicated EFIF project team working on the topic of cross-border testing. In line with the text of the EU Digital Finance Strategy this project team, which commenced its work in November 2020, developed in 2021 a procedural framework for cross-border testing. Drafts of such a framework have been discussed on an on-going basis with EFIF Members in the course of 2021. A final version of the framework was approved by the Joint Committee and the Boards of Supervisors of the three

⁸ The EFIF provides a platform for participating authorities to share experiences from engagement with firms through innovation facilitators (regulatory sandboxes and innovation hubs), to share technological expertise, and to reach common views on the regulatory and supervisory treatment of innovative products, services and business models, overall boosting bilateral and multilateral coordination. The EFIF provides a platform for supervisors to collaborate in responding to firm/group-specific issues about innovations and licencing, for those with regulatory sandboxes, to agree where appropriate, and on a voluntary basis, joint testing arrangements. The EFIF was established following up the January 2019 Joint ESA report on regulatory sandboxes and innovation hubs.

⁹ The application of new technologies for regulatory and compliance requirements by the undertaking.

ESAs in December 2021. The ‘procedural framework for innovation facilitator cross-border testing’¹⁰ establishes a common framework on which firms and national competent authorities may rely to share testing-related information in a structured manner across borders. This is to facilitate the scaling up of innovative products and solutions across the Single Market, to simplify communication between national competent authorities cross-border and to increase accessibility of information and transparency regarding regulatory sandbox testing cross-border. The framework takes into account the different scopes and characteristics of regulatory sandboxes across the EU and lays down the rules of procedure for bilateral and multilateral cooperation between national competent authorities across borders. It allows all types of firms to indicate interest in invoking it should the firm have applied for at least one regulatory sandbox in the EU and does not introduce additional eligibility criteria for access to regulatory sandboxes in the EU, which continue to be under full control of the respective national competent authorities. The EU Digital Finance Platform, which will be established by the EC in 2022, in close cooperation with the ESAs, will host all information regarding cross-border testing in the EU and will become the single access point for firms to indicate interest in the involvement of multiple national competent authorities in its testing activities.

Other digitalisation activities – open insurance and blockchain

EIOPA also continued to monitor developments and the evolution of new technologies and business models in the area of digital finance, and identifying supervisory actions as appropriate.

In January 2021 EIOPA published a [discussion paper and launched a public consultation on open insurance, focused on access to and sharing of insurance-related data](#)¹¹. In the Discussion Paper, EIOPA explored questions on whether and how far insurance value chains should be ‘opened’ up by the sharing of insurance-related and specific policyholder data amongst insurance and non-insurance firms, to protect policyholder rights and to allow for innovation in products and services.

Initial analysis indicated that the exchange of both personal and non-personal data through (open) Application Programming Interfaces has started to emerge in the insurance sector. This can facilitate industry-wide innovation and increase the agility of businesses in responding to changes in customer needs and expectations. However, it could also give rise to new or amplified risks such as data security, cyber risks, interoperability challenges, and liability, ethical and broader consumer protection issues. Increased data sharing, especially if combined with lack of governance of artificial intelligence or machine learning tools could potentially lead to financial exclusion.

¹⁰ The ‘EFIF procedural framework for cross-border testing’ is available at: https://www.eiopa.europa.eu/sites/default/files/publications/efif_procedural_framework_for_cross-border_testing_final.pdf

¹¹ https://www.eiopa.europa.eu/media/news/eiopa-consults-open-insurance_en

A key consideration for possible open insurance solutions is finding a balance between regulatory objectives related to data protection, insurance, and competition while supporting innovation, efficiency, consumer protection and financial stability.

In April 2021 EIOPA published a [discussion paper and launched a public consultation on blockchain and smart contracts in insurance](#)¹². The aim of the paper was to provide a high-level overview of risks and benefits of blockchain and smart contracts in insurance from a supervisory perspective as well as to gather feedback from stakeholders.

On one hand, blockchain has the potential to deliver key digital opportunities, reduce duplication of processes, increase process automation and efficiency, enhance customer experiences, and improve data quality. On the other hand, the adoption of blockchain may also trigger new risks to insurers, supervisors, and consumers. As blockchain technology is still evolving, several challenges are emerging, such as the complexity of the technology, energy consumption, data protection and privacy, cyber risk, integration with legacy infrastructures, or interoperability and standardisation between different blockchains.

Although the current regulatory and supervisory framework can be considered mostly effective to address emerging risks, specific issues should be considered, based on the evolution of the technology and its uses in business processes. It is important to ensure appropriate understanding by insurance undertakings and supervisors as well as proportionate governance policies and processes, to guarantee that all relevant risks are identified and properly managed. A feedback statement of the consultation was published in May 2022.

Supervision of Run-off undertakings

[supervisory convergence plan reference: 3c]

- ▶ *Development of a supervisory convergence tool addressing some specificities of run-off undertakings*¹³;
- ▶ *Development of a chapter for the supervisory handbook gathering good practices on the supervision of run-off portfolios.*

EIOPA continued to discuss some supervisory issues and challenges experienced by some NCAs in the supervision of run-off undertakings or portfolios. As a result of these discussions and after the public consultation, EIOPA finalised¹⁴ a Supervisory Statement which sets out supervisory expectations for the supervision of run-off undertakings in the context of portfolio transfers,

¹² https://www.eiopa.europa.eu/media/news/discussion-paper-blockchain-and-smart-contracts-insurance-eiopa-invites-comments-0_en

¹³ E.g. authorisation process, business model analysis, assessment of assumptions for calculating technical provisions, change in the investment/reinsurance strategy, role of private equity entities, etc.

¹⁴ The statement was published in April 2022 on EIOPA website.

acquisitions of qualifying holdings and mergers (ownership changes) as well as on-going supervision. Although it is acknowledged that run-off business model – when properly and fairly managed – can potentially bring several benefits to the insurance market and policyholders (e.g. reducing costs and complexity of business, bring more technical expertise and helping undertakings to orderly exit from the market), the supervision of run-off undertakings/portfolios was indicated by NCAs as particularly challenging because of the specific risk profile, the difficulties of the approval process of the change of ownership and the lack of specific regulation on run-off in the Solvency II framework.

Furthermore, EIOPA has noticed an increased activity to acquire (re)insurance undertakings or portfolios by some investment entities (e.g. private equity) which requires attention of Supervisory authorities to assess whether business change might have a detrimental impact on insurance service provided to policyholders and to their protection.

The Supervisory Statement recommends, among the others, some good practices (e.g. early dialogue with Supervisors) that can facilitate a lean and successful approval process and suggests Supervisory authorities to assess the key factors of the change (if any) of the business model such as the change of the assets strategy/tolerance, the assumption for technical provisions calculation or reinsurance strategy.

Taking into account the completeness of the Statement, the task of collecting more practices and guidance to support the supervision of run-off via EIOPA Supervisory handbook has been considered as no longer needed.

Cyber underwriting

[supervisory convergence plan reference: 3d]

- ▶ *EIOPA to ensure the implementation in the next years of the objectives and goals set out in the EIOPA Cyber Underwriting Strategy, published in February 2020. Further improve the reporting requirements for cyber risks in the 2021 amendment to ITS on Reporting and consider the impact from DORA.*

As a follow up to publication of the Cyber Underwriting Strategy in 2020, EIOPA has been working during 2021 on the related amendments to the Implementing Technical Standard on supervisory reporting proposing a specific reporting template on cyber underwriting.

Furthermore, while keeping the dialogue open with Stakeholders, EIOPA organised a workshop with stakeholders in December 2021 in the form of a public event and hosted interesting discussions, gaining valuable input from stakeholders both on Cyber Underwriting and Incident Reporting. These events provided interesting insights to draft a specific supervisory statement on non-affirmative cyber risks which EIOPA expect to publish, for public consultation, in the first half of 2022.

Concerning the objective of the Strategy to establish adequate assessment and mitigation tools to address potential systemic cyber and extreme risks, EIOPA has enhanced, from January 2022, its

Risk Dashboard with a new risk category named “Digitalisation and cyber risks” built on three indicators¹⁵, which will be improved once new supervisory data becomes available.

Outsourcing and Third Party Providers

[supervisory convergence plan reference: 3e]

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

Following its peer-review work plan, EIOPA initiated in 2021 the Peer Review on outsourcing by insurance or reinsurance undertakings which has demonstrated that outsourcing is an important practice used in almost all Member State. Conducting a thorough analysis of NCAs’ approaches to supervise the compliance with provisions stipulated in Solvency II framework, exchanging information and identifying any gaps as well as best practices is expected to be beneficial to further strengthen consistency and effectiveness in supervisory outcomes. Such assessment can also be useful to address potential concerns about ‘shell’ companies and to provide further insights on outsourcing of underwriting and settling claims activities under delegated authority, also from a cross-border perspective. The peer review on outsourcing is expected to be finalised in 2022.

Concerning the methodological aspects of peer review, it is worth mentioning that, leveraging of the life experience and lesson learned from the peer review on outsourcing, EIOPA published in January 2022 its Decision on a new methodology for peer reviews, which has formalised the new governance of the peer review introduced by the so called ESAs review.¹⁶

¹⁵ 1) supervisory assessment of digitalisation and cyber risks; 2) change in frequency of cyber incidents; and 3) cyber negative sentiment. These indicators are exploratory and rely on supervisors’ responses to the EIOPA Insurance Bottom-Up Survey and on publically available external data

¹⁶ Article 30 of the EIOPA (and ESAs) Regulation was amended by Regulation 2019/2175 of the European Parliament and of the Council of 18 December 2019. Under the new Article 30 of the EIOPA Regulation, several changes were introduced to peer reviews conducted by EIOPA regarding its governance (e.g. leadership by EIOP staff, establishment of an ad hoc Peer Review Committee replacing the previous Review Panel) but also its output, which includes the publication of (non-anonymised) reports.

1.2. EIOPA'S OWN INDEPENDENT ASSESSMENT

EIOPA conducts own assessment work in close cooperation with NCAs to enhance supervisory convergence and to increase the quality, effectiveness and efficiency of national supervision. In 2021, the focus of the EIOPA's own independent assessments was set to:

1. Support the supervisory capacity of NCAs and supervisory convergence;
2. Focus on cross-border and third country activities.

EIOPA OWN INDEPENDENT ASSESSMENT ACTIVITIES IN FIGURES:

- ▶ 11 Active Cooperation Platforms, covering both conduct and prudential aspects;
- ▶ Bilateral engagements with all NCAs in the context of the Union-wide supervisory priorities, both on the conduct and prudential side;
- ▶ 3 IM specific country visits and 3 follow-up country visits; 21 joint feedback sessions with NCAs and participants of the Market and Credit Risk study;
- ▶ 1 dedicated country visit on conduct supervision and two dedicated bilateral engagements covering selected aspects of conduct supervisory approaches;
- ▶ 3 Joint on-site inspections covering both conduct and prudential aspects;
- ▶ 80 Active participations in cross-border Colleges, which also looked at conduct aspects as relevant;
- ▶ 3 ongoing Technical assistance projects to an NCA and 1 finalised project via DG REFORM;
- ▶ 1 Balance sheet review;

Colleges of supervisors

EIOPA is a member of colleges of supervisors and through this participates in the direct oversight of international groups, playing a coordinating role for supervision at European level and thereby contributing to overcoming potential national fragmentation and enhancing the effectiveness of European supervision. The involvement in colleges and with group supervisors is tailored to the identified risks, and among others takes account of the business model, major risks, and governance issues including the area of risk management. Whilst prudential matters can affect conduct, poor

conduct can also have prudential consequences. Where relevant EIOPA also emphasises conduct issues in colleges.

Currently there are 76 cross-border groups, with a head office and subsidiaries in the EU/EEA, for which a college of supervisors is established. EIOPA actively engaged in 56 of those colleges for a total of 80 supervisors meetings in 2020. The college engagements focus on the specific risks of the group, however the impact of COVID-19 crisis on the sustainability of the business model has been an overarching theme in 2021, following the union-wide supervisory priority.

EIOPA has increased the number of interactions with group supervisors outside college meetings regarding on-going group supervisory issues. The aim is to support group supervisors on specific supervisory activities and/or to follow-up on EIOPA recommendations to the group supervisor or the full college.

Joint on-site inspections

To foster convergence of supervisory practices among supervisors within an insurance group and to strengthen cooperation between home and host supervisors, EIOPA promotes, supports and participates in joint on-site inspections in particular in the context of colleges of supervisors, internal model and cooperation platforms.

EIOPA participated in three joint on-site inspections led by supervisory authorities in Germany, Liechtenstein and Luxembourg. Given the travel constrictions imposed by the COVID-19 pandemic, the on-site inspections were carried out successfully via videoconference.

Cooperation Platforms

Cooperation platforms are an effective tool to achieve stronger and timely cooperation between home and host supervisory authorities and therefore enhance consumer protection.

The business models of the companies subject to a cooperation platform differ significantly, e.g. from motor insurance, surety ship business and complex unit-linked products. In general, the focus of the insurers assessed in these platforms is on growth outside the home market. Usually, there are deficiencies in the data available, insufficiencies in technical provisions and complex products and intermediation structures. The impact of a failure of such companies can cause significant waves in the host markets and severely disrupt public trust in the functioning of the internal market. Moreover, the business models and products of such companies can also cause consumer detriment in the host markets.

By the end of 2021, 11 cooperation platforms were operational with the involvement of 23 NCAs. The home supervisors of the operational platforms are Bulgaria, Denmark, Hungary, Liechtenstein, Luxembourg, Malta, Romania and Slovakia. The cooperation platform is active as long as the risks identified raise concerns about the appropriate level of protection of policyholders. Many actions

and measures were taken and successfully implemented in 2021. For some of the platforms the intensive cooperation is continuing into 2022.

Bilateral engagements with NCAs

To ensure a common European understanding of effective supervision, EIOPA regularly engages bilaterally with NCAs to assess more in detail national practices. The independent assessment of supervisory practices across Europe provides EIOPA with an overall picture of Solvency II, PRIIPs and IDD implementation and defines areas where actions are required to further improve the supervisory framework and supervisory practices.

The bilateral engagements were held with all NCAs, also covering the union-wide strategic supervisory priorities that were established in early 2021. EIOPA identified business model sustainability and adequate product design as two Union-wide strategic supervisory priorities relevant for NCAs.

Following the revised EIOPA Regulation, NCAs shall take those priorities into account when drawing up their work programmes and shall notify EIOPA accordingly. EIOPA will coordinate the supervisory actions with the NCAs on specific topics with the aim to provide a structured and consistent response to the key risks the European Union and the individual insurance markets are exposed to.

The bilateral calls with NCAs were furthermore focused to follow up on previous identified issues, implementation of EIOPA recommendations and improvements of existing supervisory processes in place under the IORP II or Solvency II framework as well as conduct supervision aspects. In addition, the bilateral engagements concentrated on the Authorities itself, their organisation, transparency, accountability as well as on supervisory practices in thematic reviews.

In 2021, EIOPA initiated 3 visits that solely focused on Internal models and one focussing on the implementation of the conduct risk framework.

Technical assistance

EIOPA finalised the work on the project for Enhancing of Market Conduct Supervision in Italy which was in cooperation with the Istituto per la Vigilanza sulle Assicurazioni (IVASS). The project was supported by the DG REFORM of the European Commission and aimed at introducing mystery shopping as a tool for the conduct supervision in Italy. As a next step, EIOPA built on the work done through this project as well as on the experiences from our other members and developed a methodology that can be used by national supervisors if and when they begin to begin to implement mystery shopping as a conduct supervision tool.

Under the DG REFORM agenda, EIOPA also started in 2021 a project with the Portuguese Insurance Supervision Authority (ASF) to enhance conduct supervision and projects two in Greece (one with the Bank of Greece and one with the pension supervisory authorities) on conduct supervision,

NatCat protection gaps and the reform of Pillar II pensions. These projects are expected to be finalised in the second half of 2022.

Equivalence monitoring

The European Commission based its equivalence assessment on the advice and information provided by EIOPA before issuing its equivalence decision at the time when Solvency II entered into force. EIOPA's framework for equivalence monitoring includes a review of its advices every three years or upon learning of significant developments in the regulatory and supervisory regime for insurance and reinsurance undertakings in a third country.

The second exercise on Bermuda was initiated in November 2022. The focus is on the supervisory implementation of the equivalent regime to ensure the same outcome from a policyholder protection perspective with regards to the protection under Solvency II. The aim is to finalise the exercise in the second half of 2022 with a final report, followed by an action plan and continued monitoring.

The monitoring phase following the first exercise in Switzerland continued during 2021 with regular engagements between FINMA and EIOPA on the agreed action plan. The action plan should be fulfilled in the third quarter of 2022, after which the second exercise will be prepared.

Assessment of NCAs independence

The independence of supervisory authorities is crucial for the legitimacy and credibility of the supervisory process. For public bodies, independence and good governance are necessary to avoid possible conflicts of interest and to reduce the likelihood of undue external influence on supervisory decisions.

The criteria provide clarity for supervisory authorities on EIOPA's expectations. Taking on board the relevant articles in the Solvency II and IORP II Directive, international standards and supervisory experiences, they specify further the principles of operational, financial and personal independence as well as transparency and accountability.

Recommendation under art. 16

EIOPA Board issued in mid-2021 an individual recommendation to the National Bank of Slovakia to take supervisory actions against an undertaking which pursues cross-border business in several Member States. In the second half of 2021 EIOPA concluded non-compliance with this recommendation. This case among others, signals the increasing relevance of the risk that cross-border business may become an issue for consumers if home/host supervision is not effective and properly coordinated highlighting weakness in the European supervisory architecture.

Inquiry

EIOPA received its first request to initiate an inquiry into specific concerns related to group supervision at the end of 2021. To perform the activity, an Inquiry Panel needs to be established by the Board of Supervisors, which should approve the project plan and the draft Inquiry report with recommendations if applicable. The report should be adopted by the Board of Supervisors. An indicative planning suggests the Inquiry will be finalised in the fourth quarter of 2022.

Balance sheet review Romania

The Balance Sheet Review of the Romanian insurance sector assessed the appropriateness of the system of governance and of the financial and solvency position of the Romanian insurers.

The Balance Sheet Review covered 24 Romanian insurance undertakings, with the reference date of 30 June 2020 and resulted in a significant decrease of the aggregated prudential solvency requirements compared with the ratios reported at the reference date. The aggregated Solvency Capital Requirement (SCR) ratio after the Balance Sheet Review is 99% (decreased from 179%) and the aggregated Minimum Capital Requirement (MCR) ratio is 259% (decreased from 436%).

These results include City Insurance S.A. (City), which was still operating in the Romanian insurance market at the reference date. City had its authorization to pursue insurance activities withdrawn on 16 September 2021.

The Balance Sheet Review was carried out by independent external reviewers based on a detailed methodology developed for the purposes of the exercise. The exercise was overseen by a Steering Committee composed by representatives of the ASF and EIOPA with the support of a consultant team comprising representatives of both authorities.

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