

To: Solvency II Working Group
From: Prudential Team
cc:
Date: 4 February 2019
Reference: ECO-SLV-19-022

Subject: EIOPAs Report to the EC on Group Supervision and Capital Management with a Group of Insurance or Reinsurance Undertakings, and FoS and FoE under SII

Comments

Following the EC's request in the context of Article 242 (2) of the Solvency II Directive, EIOPA published its detailed [report](#) on 14 December 2018.

The secretariat provides below a summary of EIOPA's key findings and reflections. These findings are likely to be part of the SII 2020 review discussions, as provided in Article 242 (2): "*The Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals for the amendment of this Directive*".

Key highlights with potential follow-up proposals

In particular, the secretariat would draw members' attention on the following:

- EIOPA is pointing out the **need for early intervention powers at group level**.
- EIOPA claims that it **lacks powers to solve cross-border issues** and should be informed at early stage in case of new developments.
- EIOPA is asking for a **minimum harmonised framework** for:
 - Insurance guarantee schemes (IGS)
 - Recovery and resolution (R&R)
- EIOPA suggests to **clarify level 1 or level 2 regulation** on:
 - The definition of intra-group transactions (IGTs) and risk concentration (RC)
 - The definitions related to the scope of group supervision
 - The assessment of the eligibility of group own funds
 - Two proto colleges were set for third country groups. EIOPA suggests that proto colleges and the information exchange between its members should be formalised.
 - Group solvency calculation: the application of Methods 1 and 2, the inclusion of other financial sectors companies and the application of mutatis mutandis
- EIOPA is of the view that **reporting requirements and/or templates should be reviewed** for:
 - Internal models (IMs)
 - IGTs and RC
 - Diversification effects
 - Freedom of services (FoS) for prudential supervision needs of home and host supervisors
- EIOPA highlights the **need for further guidance** on:
 - the setting of thresholds and supervision of RC and IGT and the reporting guidelines for IGTs

- the equivalence assessment conducted by NCAs
- EIOPA expects to be consulted before the final decision when a NCA decides to exempt the holding company from the scope.

Summary

1. Early intervention

- In this section, EIOPA presents some of the findings in their NCA survey relating to the early intervention stage: since SII is in force, there have been four notifications of deteriorating financial conditions, one breach of SCR and therefore only one recovery plan was requested.
- EIOPA then repeats in analysis of various early intervention powers that are currently available to the different NCAs: in general, not many NCAs have these powers
- EIOPA then discusses the difficulties that NCAs have with applying early intervention powers to groups; one of the main obstacles for applying these powers are related to the enforceability of measures taken by the coordinator of the insurance led financial conglomerate.
- In the "reflections" section at the end, EIOPA repeats the conclusion in its opinion on R&R, i.e. **because the majority of NCAs have no powers above SII and no trigger framework for early intervention, a harmonised recovery and resolution framework should introduce a common set of early intervention powers for NSAs which are compatible with the Solvency II framework, without it resulting in a new pre-defined intervention level or capital requirement beyond what is envisaged in Solvency II.**
- In addition, a clarification of the application of Article 141 of the Solvency II Directive at group level could be considered together with the common set of early intervention powers for NSAs which are compatible with the Solvency II framework.

2. Centralised risk management (CRM) and IMs including stress testing

CRM

- *Background: the EC – COM(2008)0119 – and EP – A6-0413/2008 – foresee the creation of a "group support regime" as "an innovative regime which seeks to facilitate capital management by groups, essentially by a) allowing under certain conditions a parent undertaking to use declarations of group support to meet part of the Solvency Capital Requirement of its subsidiaries, and b) introducing derogations to some Articles on solo supervision, where appropriate. The proposal allows the adoption of implementing measures, and provides for a review of the whole system five years after the transposition of the Directive."*
- Centralised group risk management agreements are not used. **EIOPA questions whether this should be discussed at all.**
- **In practice, there are no clear benefits to the use of this regime.** There are no derogations on solo supervision in Solvency II. Specifically, SII does not provide a derogation to the principle that the ultimate responsibility in terms of solvency remains with the solo undertaking in any case.

IMs

- **NCAs reported that the SII Directive "offers the necessary measures and flexibility** required for supervision of internal models" and "allows NCAs to effectively assess, authorise and monitor the appropriateness of internal models".
- EIOPA highlights divergent supervisory practises which lead some groups to exclude from the scope of the IM some companies from other jurisdictions, such as:
 - authorisation/prohibition of dynamic VA
 - integration of sovereign risk
 - different parametrisation and/or specific amendments to capture local market specificities.
- **EIOPA is assessing "how quantitative reporting requirements can be improved so as to lay the foundation for future internal model ongoing appropriateness indicators" (IMOGAPIs) and "whether for supervisory purposes it is sufficient to be in a position to receive standard formula figures only via a reasoned request and for major model changes".**

3. IGT and RC

IGTs

- EIOPA reported that most groups have equity-type intra-group transactions (IGTs), and derivative transactions are concentrated around a few (re)insurance groups.
- It highlights the **gaps in the definition** of IGTs in the Directive for:
 - insurance holding companies (**IHC**)
 - mixed financial holding companies (**MFHC**) (both are considered as “important for the group supervision and for the proper group solvency calculation and supervision of IGTs”)
 - **ancillary service undertakings**
 - **natural persons** in the sense of related parties.
- **EIOPA suggests a review of:**
 - **the wording in the Directive** to include a reference to the definition of a group
 - **the reporting guidelines** to ensure a consistent supervision.

RC

- Regarding risk concentration, EIOPA found that:
 - insurance groups are generally well diversified for assets but less for liabilities, as a result of the “strong concentration of exposures related to insurance liabilities, the financial sector and investments in the home Member State”.
 - the definition of RC in FICOD is much clearer than SII
 - there is no standardised reporting template for financial conglomerates, on which the Joint Committee financial conglomerates taskforce is working
 - Relevant data is hard to obtain in case of third country groups
- **EIOPA’s reflections are:**
 - Combining the quantitative threshold for reporting with a qualitative approach
 - **the QRTs (in particular S.37) should be complemented with explanations** on aggregated data.
- EIOPA is of the view that further guidance for the setting of thresholds and supervision of RC and IGT is needed.

4. Diversification effects between undertakings of a given group

- EIOPA states that the current structure of the QRTs does not facilitate a granular analysis of diversification benefits. It is noted that some NCAs expressed the need for “concrete supervisory reporting requirements”.
- There is a challenge in carrying out a meaningful comparative analysis due to the specificities of each group.
- EIOPA highlights that it is a priority to conduct a detailed analysis of the diversification effects for all groups.
- **EIOPA suggests reviewing some reporting templates and to set a minimum level of information and structure the sharing of information.**

5. Mediation of supervisory disputes

- EIOPA notes that the “**high level principles**” of Solvency II create room for regulatory arbitrage and take the example of diverging views and approaches in the assessment of fitness and propriety of shareholders.
- EIOPA’s main reflection is that it **lacks powers to efficiently solve disputes between NCAs in cross-border situations.**

6. Barriers to asset transferability

- EIOPA notes that assessing the availability of assets in cross-border groups requires deep knowledge of the various jurisdictions, and that further challenge arise in the case of groups operating in third countries.
- EIOPA highlights the **need for a clearer regulatory stand to assess the eligibility of group own funds**. It also notes that the **question whether the 9 months period sets a realistic time frame** “can be considered both from a legal and supervisory point of view”.
- It is noted that the **discussions on barriers to asset transferability should be considered with the issues on early intervention for groups** (1. Early intervention) and the level of protection of policyholders, “particularly in crisis situations”.
- EIOPA highlights the **need for further guidance on the requirement to include a reference to the group SCR for the classification of own funds items, including the own fund items issued by third country entities and other financial sectors**.

7. Level of protection of policyholders

- This section is about the functioning of Crisis Management Groups (CMGs)
- NCAs have different views about the added value and functioning of CMGs, but in general they think that they contribute to policyholder protection and financial stability.
- EIOPA considers that in crisis situations the risk that diverging interests occur across Member States remains, thereby potentially prioritising the protection of policyholders at a local level and hindering co-operation. These issues are so far still an ongoing concern for some CMGs and need to be further discussed. However, it was noted by some NCAs that the CMG could be a useful platform to discuss such topics further.
- Recovery plans, liquidity risk management plans (LRMPs) and systemic risk management plans (SRMPs) are all discussed by CMGs regularly and no element of these plans is perceived by NCAs to threaten policyholder protection. Resolution plans are also discussed but only during drafting. Some NCAs pointed out that in case of resolution it cannot be precluded that some policyholders will be negatively affected.
- In the “reflections” section at the end, EIOPA repeats the conclusion in its opinion on R&R i.e. **EIOPA is of the view that there is a need for a minimum harmonised framework for the recovery and resolution of (re)insurers. This would facilitate cross-border management of insurance crises**.

8. IGS

- This section is a copy-paste of EIOPA’s discussion paper from last year (with a small added part on motor insurance schemes (MIS)).
- EIOPA’s “reflection” on IGS and MIS is: **EIOPA is of the view that a minimum degree of harmonisation in the field of IGS would benefit policyholders, the insurance market and more broadly contribute to financial stability in the EU**, also considering the need to have a harmonised recovery and resolution framework in place. A harmonised approach should take into account the existing national schemes.

9. Scope of group supervision

- EIOPA notes that the **concept of centralised coordination for the definition of a group needs further clarification**.
- The **definition of IHC/MAIHC is problematic** as well.
- NCAs have different approaches when excluding a company from the scope of group supervision.
- EIOPA is of the view that **the term “negligible interest” needs further guidance through supervisory convergence tools**.
- **EIOPA claims that it should be consulted before the final decision when a NCA decides to exempt the holding company from the scope** and apply group supervision at the lower level. The rationale is that there can be substantial capital relief for the group SCR when the top holding is not the 100% owner of the group.

- EIOPA states the **need for further guidance in case of the equivalence assessment by NCAs.**
- Two proto colleges were created to collaborate with third country NCAs where the parent company is established in a third country. **EIOPA suggests the formalisation of proto colleges and of the information exchange between its members.**

10. Group solvency calculation and group supervision

- EIOPA highlights the **need for clarification regarding:**
 - the **application of Methods 1 and 2** for the group solvency calculations
 - the **inclusion of other financial sectors** companies
 - the **application of mutatis mutandis** to groups which suffers different interpretations among NCAs. For this purpose, EIOPA suggests that **adopting a policy stand either at level 1 or level 2 should be considered.**

11. FoE/FoS

- NCAs reported issues regarding information exchange and lack of powers as a host supervisor, especially when the activity is carried out almost only on the basis of FoS outside the home State.
- The need for closer cooperation between NCAs is noted. EIOPA will encourage the extension of the scope of colleges of supervisors to cover FoS/FoE material issues.
- EIOPA highlights the **need for “more clear powers” to initiate the establishment of co-operation platforms, and the need to be informed at early stage of cross-border developments.**
- EIOPA states that the information regarding cross-border business is currently addressing statistical needs and that the **reporting requirements should be reviewed for prudential supervision needs of home and host supervisors.**