

To: Solvency II Working Group  
From: Prudential Team  
cc:  
Date: 4 February 2019  
Reference: ECO-SLV-19-023

EIOPAs Results of the peer review on propriety of ASMB members and qualifying shareholders

Subject:

## Comments

EIOPAs published the [results](#) of the peer review on propriety of administrative, management or supervisory body (AMSB) members and qualifying shareholders on 25 January 2019. Some of the recommendations foresee further discussion in the context of the SII 2020 review.

## Findings and recommended actions

- National legislation or regulatory framework
  - Some national legislation are not aligned with the European framework and NCAs are applying different standards and scope while assessing propriety (ie whether considering ongoing prosecution and pending investigations for criminal and administrative offence or taking into account situations relating to past and present financial soundness).
  - **EIOPA recommends to strengthen the scope of the propriety assessment or enhancing the NCAs' legal powers to take necessary actions in relation to AMSB members<sup>1</sup>.**
- Propriety assessment questionnaires
  - **EIOPA recommends to amend the questionnaires to incorporate specific questions in relation to tax and consumer protection offence<sup>2</sup>** (ie involvement in bankruptcies, AML, financial soundness of the applicant and doing business without a licence).
- Ongoing assessment
  - **EIOPA recommends that propriety assessment of AMSB members and qualifying shareholders should be reviewed or examined as part of NCAs' ongoing supervisory activities using a risk-based approach, in a proportionate manner<sup>3</sup>.** This should not consist in replicating the initial application process
  - Examples of good practises are:
    - Assessing the application of fit and proper policy and process during a review (off site or on site), with the same frequency as governance reviews.
    - Conducting themed/horizontal reviews of insurers' design and implementation of F&P policy (sample of insurers) "from time to time".

<sup>1</sup> NCAs concerned: Croatia, Estonia, Greece, Italy, Latvia, Luxembourg, Slovakia, Slovenia, Spain

<sup>2</sup> NCAs concerned: Belgium, Poland

<sup>3</sup> NCAs concerned regarding qualifying shareholders: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Slovenia, Slovakia, Spain, Sweden, UK; regarding AMSB members: Cyprus, Finland, France, Germany, Liechtenstein, Luxembourg, Netherlands, Norway, Slovakia, Spain, Sweden, UK

- Conducting a reassessment at the point of renewals of mandates or on an annual basis.
- “EIOPA’s view is that it is not necessary [...] to ensure 100% coverage of [...] insurers on an annual basis, the propriety aspects can be assessed by following a risk-based approach”.
- Guidance and supervisory records
  - **EIOPA recommends that NCAs develop or improve their internal or external guidance in relation to propriety assessment of AMSB members or qualifying shareholders<sup>4</sup>.**
  - **EIOPA recommends that NCAs develop or improve their supervisory records or databases, particularly regarding withdrawn applications following NCAs’ concerns<sup>5</sup>.**

#### Follow-up steps for EIOPA

- Harmonisation of civil and criminal laws: 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.**
  - **EIOPA will develop some guiding principles and a template for cross-border cooperation.**
- Complex cross-border cases: EIOPA will aim to strengthen and support the process by developing a brief guidance or working protocol.
  - **EIOPA will encourage NCAs to undertake joint interviews.**
- Strengthening of legal powers of NCAs: **EIOPA will consider if an improvement in the legal basis in the SII Directive is needed as part of the SII review to strengthened legal powers for NCAs** (ie ability to take action in case a qualifying shareholder is not considered proper, power to seek information from qualifying shareholders and other related parties).

#### Best practices listed

- UK: Roles and responsibilities are clearly defined, including for the assessment of fitness and propriety in the regulatory framework. The PRA implemented a policy statement on regulatory references that enables insurers to request employment references from previous employer(s).
- DE: The BaFin considers the European certificate of criminal record in its assessment.
- NL: The DNB is obliged by law to consult the authority of financial markets. NCAs of different financial sectors may decide to attend assessment interviews of the other authority.
- IE: The CIB has a historical database combined with a flagging system on all assessments.
- LI: The FMA is able to put an assessment on hold in case of a pending proceeding for criminal or administrative offence.
- IT: The IVASS has developed a well-structured framework, including clear and detailed internal guidelines, systematic verification of information transmitted, consultation with several authorities, requiring qualifying shareholders to provide notification and details of any material changes.
- SK: The 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 if the insurer followed propriety policies.

<sup>4</sup> NCAs concerned regarding guidance: Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Portugal, Sweden

<sup>5</sup> NCAs concerned: Belgium, Denmark, France, Greece, Italy, Slovakia, Spain