

To: Solvency II Working Group, ESAs Review Project Group
From: Ecofin Team

Date: 26-09-2017
Reference: ECO-ESA-17-057

Subject: Proposed changes to EIOPA's role in internal models, text comparison

Summary

The secretariat has prepared a comparison document reflecting the changes proposed by the EC to EIOPA's role related to **internal models**. In the Annex members will find extracts from the current text of the EIOPA regulation and Solvency II Directive, together with the proposed modifications in tracked changes.

Should members wish to share any views in advance of the ESAs PG meeting on 2 October, please contact the secretariat via email to ecofin@insuranceeurope.eu and rasmussen@insuranceeurope.eu.

Background

In [ECO-ESA-17-046](#) the secretariat shared a summary and preliminary views on the leaked EC proposal for the ESAs review. The formal proposal was published consequently and share with members in FLASH-17-051 and the texts have been uploaded on the Extranet separately (relevant for this memo are ECO-ESA-17-050 and ECO-ESA-17-055).

The official EC proposal foresees a significant strengthening of EIOPA's role in relation to internal models. This is envisaged via the introduction of a new Article 21 a in the EIOPA regulations, as well as changes to the existing regime in the Solvency II Directive.

With the Annex to this memo, the secretariat intends to provide members with an overview of the changes suggested in both – Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority; *EIOPA regulation*) and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (*Solvency II Directive*).

Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)

Article 8

Tasks and powers of the Authority

1. The Authority shall have the following tasks:
 - (a) to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards which shall be based on the legislative acts referred to in Article 1(2);
 - (aa) to develop and maintain an up to date Union supervisory handbook on the supervision of financial institutions in the Union;
 - (b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial institutions, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;
 - (c) to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;
 - (d) to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
 - (e) to organise and conduct peer-reviews analyses of competent authorities and, in that context, to including issuing guidelines and recommendations and to identifying best practices, in order with a view to strengthening consistency in supervisory outcomes;
 - (f) to monitor and assess market developments in the area of its competences including, where relevant, developments relating to trends in innovative financial services;
 - (g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;
 - (h) to foster the protection of policyholders, pension scheme members and beneficiaries, consumers and investors;
 - (i) to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to policy holders, to beneficiaries and throughout the Union, in accordance with Articles 21 to 26;
 - (j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;
 - (k) to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure information is easily accessible by the public;
 - (l) to take over, as appropriate, all existing and ongoing tasks from the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS);
 - (m) to issue opinions in respect of the applications of internal models, to facilitate decision making and to provide assistance as foreseen in Article 21a;

- 1a. When carrying out its tasks in accordance with this Regulation, the authority shall take account of technological innovation, innovative and sustainable business models, and the integration of environmental, social and governance related factors;
2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular to:
 - (a) develop draft regulatory technical standards in the specific cases referred to in Article 10;
 - (b) develop draft implementing technical standards in the specific cases referred to in Article 15;
 - (c) issue guidelines and recommendations, as laid down in Article 16;
 - (ca) issue recommendations as laid down in Articles 29a and 31a;
 - (d) issue recommendations in specific cases, as referred to in Article 17(3);
 - (e) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 18(3) and 19(3);
 - (f) in cases concerning directly applicable Union law, take individual decisions addressed to financial institutions, in the specific cases referred to in Article 17(6), in Article 18(4) and in Article 19(4);
 - (g) issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 34;
 - (h) collect the necessary information concerning financial institutions as provided for in Article 35 and Article 35b;
 - (i) develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on consumer protection;
 - (j) provide a centrally accessible database of registered financial institutions in the area of its competence where specified in the acts referred to in Article 1(2).
3. When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority shall have due regard to the principles of better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation.

Article 21a
Internal models

1. In order to contribute to the establishment of high-quality common supervisory standards and practices, the Authority shall on its own initiative, or upon request from one or more supervisory authorities:

(a) Issue opinions to the supervisory authorities concerned on the application to use or change an internal model. To this end, EIOPA may request all the information necessary from the supervisory authorities concerned; and

(b) In case of disagreement related to the approval of internal models assist the supervisory concerned authorities in reaching an agreement in accordance with the procedure set out in Article 19.

2. In the circumstances set out under Article 231(6a) of Directive 2009/138/EC, undertakings may request EIOPA to assist the competent authorities in reaching an agreement in accordance with the procedure set out in Article 19.

Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance

Subsection 3

Solvency capital requirement full and partial internal models

Article 112

General provisions for the approval of full and partial internal models

1. Member States shall ensure that insurance or reinsurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the supervisory authorities.
2. Insurance and reinsurance undertakings may use partial internal models for the calculation of one or more of the following:
 - (a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in Articles 104 and 105;
 - (b) the capital requirement for operational risk as set out in Article 107;
 - (c) the adjustment referred to in Article 108.

In addition, partial modelling may be applied to the whole business of insurance and reinsurance undertakings, or only to one or more major business units.

3. In any application for approval, insurance and reinsurance undertakings shall submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in Articles 120 to 125.

Where the application for that approval relates to a partial internal model, the requirements set out in Articles 120 to 125 shall be adapted to take account of the limited scope of the application of the model.

4. The supervisory authorities shall decide on the application within six months from the receipt of the complete application.

Once the application is deemed complete by the supervisory authorities, they shall inform EIOPA of the application.

Upon request by EIOPA, the supervisory authorities shall provide EIOPA with all the documentation submitted by the undertaking in its application.

EIOPA may issue an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within 4 months of receipt by the supervisory authority of the complete application.

Where such an Opinion is issued, the supervisory authority shall take its decision as referred to in the first subparagraph in conformity with that Opinion, or provide reasons in writing to EIOPA and to the applicant where the decision was not taken in conformity with that Opinion.

5. Supervisory authorities shall give approval to the application only if they are satisfied that the systems of the insurance or reinsurance undertaking for identifying, measuring, monitoring, managing and reporting risk are adequate and in particular, that the internal model fulfils the requirements referred to in paragraph 3.
6. A decision by the supervisory authorities to reject the application for the use of an internal model shall state the reasons on which it is based.
7. After having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings may, by means of a decision stating the reasons, be required to provide supervisory authorities with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.

[...]

Subsection 4
Calculation Methods

[...]

Article 231
Group internal model

1. In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate with each other and with EIOPA, to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

An application as referred to in the first subparagraph shall be submitted to the group supervisor.

The group supervisor shall inform the other members of the college of supervisors of the receipt of the application and forward the complete application, including the documentation submitted by the undertaking, to ~~the~~ college members, including EIOPA, without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

2b. Where EIOPA considers that an application as referred to in the first paragraph presents particular issues with respect to consistency in internal model application approvals across the Union, EIOPA may issue an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within 4 months of receipt by the group supervisor of the complete application.

Where such an Opinion is issued, the supervisory authorities shall take their joint decision as referred to in the second paragraph in conformity with that Opinion, or provide reasons in writing to EIOPA and the applicant where the joint decision was not taken in conformity with that Opinion.

3. If, within the six-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010 or EIOPA is assisting the supervisory authorities on its own initiative in accordance with Article 19(1)(b) of that Regulation, the group supervisor shall defer its decision ~~and await any until EIOPA adopts a decision that EIOPA may take~~ in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's adopted decision. ~~That~~ The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the six-month period or after a joint decision has been reached.

Where EIOPA does not adopt a decision as referred to in the second subparagraph ~~If~~, in accordance with Article ~~44(2) and 19(3) and Article 44(1)(3)~~ of Regulation (EU) No 1094/2010, the ~~decision proposed by the panel is rejected~~, the group supervisor shall take a final decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The six-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4. EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5. Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the group supervisor shall provide the applicant with a document setting out the full reasons.
6. In the absence of the adoption of a joint decision within six months from the date of receipt of the complete application by the group, the group supervisor shall make its own decision on the application.

The group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned [and of EIOPA](#) expressed during that six-month period.

The group supervisor shall provide the applicant ~~and~~ the other supervisory authorities concerned [and EIOPA](#) with a document setting out its fully reasoned decision.

That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

6a. After the six month period referred to in paragraph 2 and before the group supervisor takes a decision as referred to in paragraph 6, the undertaking which submitted the application in accordance with paragraph 1 may request that EIOPA assist the supervisory authorities in reaching an agreement, in accordance with Article 19 of Regulation (EU) No 1094/2010.

The group supervisor shall defer its decision until EIOPA adopts a decision in accordance with Article 19(3) of Regulation (EU) No 1094/2010 and shall take its decision in conformity with EIOPA's adopted decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall adopt its decision within 1 month from the end of the conciliation period referred to in Article 19(2) of Regulation (EU) No 1094/2010.

Where EIOPA does not adopt a decision as referred to in the third subparagraph in accordance with Article 19(3) of Regulation (EU) 1094/2010 of that Regulation, the group supervisor shall take a final decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

7. Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in accordance with Article 37, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model.

In exceptional circumstances, where such capital add-on would not be appropriate, the supervisory authority may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title I, Chapter VI, Section 4, Subsections 1 and 2. In accordance with Article 37(1)(a) and (c), the supervisory authority may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula.

The supervisory authority shall explain any decision referred to in the first and second subparagraphs to both the insurance or reinsurance undertaking and the other members of the college of supervisors.

EIOPA may issue guidelines to ensure consistent and coherent application of this paragraph.

Article 231a

Supervisory approval regarding internal models

1. EIOPA may, at its own initiative or at the request of supervisory authorities or insurance or reinsurance undertakings, issue an Opinion to the supervisory authorities in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010, on internal models and approvals of internal model applications as set out in Articles 112 to 127, Article 230, Article 231 and Article 233, with a view to foster supervisory convergence.

Where EIOPA issues an Opinion as referred to in the first subparagraph, the supervisory authorities concerned shall take their decision or joint decision, as applicable in conformity with that Opinion, or provide reasons in writing to EIOPA and the applicant where the decision or joint decision is not taken in conformity with that Opinion.

2. Where supervisory authorities carry out joint on-site inspections, in which EIOPA staff participate in accordance with Article 21 of Regulation (EU) No 1094/2010, of undertakings or groups applying a full or partial internal model pursuant to Articles 112 to 127, 230, 231 or 233, EIOPA staff shall produce a specific report on the internal model. That report shall be submitted to the EIOPA Executive Board.

Article 231b

Review

1. EIOPA shall, on an annual basis, report to the European Parliament, the Council and the Commission on general issues supervisory authorities have dealt with in the process of approving internal models or changes thereto pursuant to Article 112 to 127, 230, 231 and 233.

Supervisory authorities shall provide EIOPA with the information EIOPA considers relevant to produce such a report.

2. EIOPA shall submit to the Commission, by 1 January 2020 and after conducting a public consultation, an Opinion on the application of Articles 112 to 127, Article 230, Article 231 and Article 233 by supervisory authorities, including delegated acts and implementing technical standards adopted pursuant thereto. That Opinion shall also assess any divergences in internal models within the Union.
3. Based on the opinion submitted by EIOPA in accordance with paragraph 2, the Commission shall submit a report to the European Parliament and the Council on the application of Articles 112 to 127, Article 230, Article 231 and Article 233 by supervisory authorities, including delegated acts and implementing technical standards adopted pursuant thereto, by 1 January 2021.

[...]

Subsection 6

Supervision of group solvency for groups with centralised risk management

[...]

Article 237

Subsidiaries of an insurance or reinsurance undertaking: decision on the application

1. In the case of applications for permission to be subject to the rules laid down in Articles 238 and 239, the supervisory authorities concerned shall work together within the college of supervisors, in full cooperation, to decide whether or not to

grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the supervisory authority having authorised the subsidiary. That supervisory authority shall inform the other members of the college of supervisors and forward the complete application to them, without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.
3. If, within the three-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached.

If: ~~EIOPA does not adopt a decision as referred to in accordance with the second subparagraph under Article 41(2) and 19(3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected,~~ the group supervisor shall take a final decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4. EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5. Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the supervisory authority having authorised the subsidiary shall provide the applicant with the decision stating the full reasons. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.
6. In the absence of a joint decision of the supervisory authorities concerned within the three-month period set out in paragraph 2, the group supervisor shall take its own decision with regard to the application.

During that period the group supervisor shall duly consider the following:

- (a) any views and reservations of the supervisory authorities concerned;
- (b) any reservations of the other supervisory authorities within the college of supervisors.

The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned. The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision. The decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

[...]

CHAPTER III

Measures to facilitate groups supervision

[...]

Article 248

Rights and duties of the group supervisor and the other supervisors College of supervisors

1. The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:
 - (a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;
 - (b) supervisory review and assessment of the financial situation of the group;
 - (c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 218 to 245;
 - (d) assessment of the system of governance of the group, as set out in Article 246, and of whether the members of the administrative, management or supervisory body of the participating undertaking fulfil the requirements set out in Articles 42 and 257;
 - (e) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;
 - (f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 and leading the process for permitting the application of the regime established in Articles 237 to 240.
2. In order to facilitate the exercise of the group supervision tasks referred to in paragraph 1, a college of supervisors, chaired by the group supervisor, shall be established.

The college of supervisors shall ensure that cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors, are effectively applied in accordance with Title III, with a view to promoting the convergence of their respective decisions and activities.

3. The membership of the college of supervisors shall include the group supervisor and supervisory authorities of all the Member States in which the head office of all subsidiary undertakings is situated.

The supervisory authorities of significant branches and related undertakings shall also be allowed to participate in the college of supervisors. However, their participation shall be limited to achieving the objective of an efficient exchange of information.

The effective functioning of the college of supervisors may require that some activities be carried out by a reduced number of supervisory authorities therein.

4. Without prejudice to any measure adopted pursuant to this Directive, the establishment and functioning of the college of supervisors shall be based on coordination arrangements concluded by the group supervisor and the other supervisory authorities concerned.

Where diverging views concerning the coordination arrangements arise, any member of the college of supervisors may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article. The group supervisor shall take its

final decision in conformity with EIOPA's decision. The group supervisor shall transmit the decision to the other supervisory authorities concerned.

~~After consulting the supervisory authorities concerned, the group supervisor shall duly consider any advice produced by CEIOPS within two months of receipt thereof before taking its final decision. The decision shall state the full reasons and shall contain an explanation of any significant deviation from any advice given by CEIOPS. The group supervisor shall transmit the decision to the other supervisory authorities concerned.~~

5. Without prejudice to any measure adopted pursuant to this Directive, the coordination arrangements referred to in paragraph 4 shall specify the procedures for:

- (a) the decision-making process among the supervisory authorities concerned in accordance with Articles 231, 232 and 247;
- (b) consultation under paragraph 4 of this Article and under Article 218(5).

Without prejudice to the rights and duties allocated by this Directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor, the other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities.

In addition, the coordination arrangements may set out procedures for:

- (a) consultation among the supervisory authorities concerned, in particular as referred to in Articles 213 to 217, 219 to 221, 227, 244 to 246, 250, 256, 260 and 262;
- (b) cooperation with other supervisory authorities.

6. EIOPA shall issue guidelines for the operational functioning of colleges of supervisors on the basis of comprehensive reviews of their work in order to assess the level of convergence between them. Such reviews shall be carried out at least every three years. Member States shall ensure that the group supervisor transmits to EIOPA the information on the functioning of the colleges of supervisors and on any difficulties encountered that are relevant for those reviews.

In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA may develop draft regulatory technical standards to specify the operational functioning of colleges of supervisors based on the guidelines referred to in the first subparagraph.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

7. In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the coordination of group supervision for the purposes of paragraphs 1 to 6.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

8. The Commission shall adopt delegated acts in accordance with Article 301a in regard to the definition of 'significant branch'