

EIOPA Consultation Paper on the Opinion on the 2020 review of Solvency II

Freedom to Provide Services and Freedom of Establishment



In October 2019, EIOPA published a consultation paper on its opinion on the Solvency II 2020 review. This briefing note summarises the section of the consultation paper on Freedom to Provide Services and Freedom of Establishment. EIOPA has requested stakeholders to provide feedback on this consultation paper by 15 January 2020.

Overview

On 11 February 2019, the European Commission (**EC**) issued a formal Call for Advice¹ to the European Insurance and Occupational Pensions Authority (**EIOPA**) on the review of the Solvency II Directive. This relates to the full review of the Solvency II rules required by the end of 2020 (**2020 Review**) as required by the Solvency II Directive.

On 25 June 2019 EIOPA published a first wave of consultation papers on its proposals for the 2020 Review regarding supervisory reporting and public disclosure and Insurance Guarantee Schemes. Milliman has written briefing notes on each of these papers (available [here](#)).

On 15 October 2019 EIOPA issued a second wave of consultation entitled "Consultation Paper on the Opinion on the 2020 review of Solvency II" (the **CP**). This was accompanied by an impact assessment document including an assessment of the combined impact of the proposed changes. The CP is 878 pages long and covers a wide range of topics as follows:

- Long-Term Guarantee (**LTG**) and equity risk measures
- Technical Provisions
- Own funds
- Solvency Capital Requirement (**SCR**)
- Minimum Capital Requirement (**MCR**)
- Reporting and disclosure
- Proportionality
- Group supervision
- Freedom to provide Services (**FoS**) and Freedom of Establishment (**FoE**)
- Macroprudential policy
- Recovery and resolution
- Fit and proper requirements

Milliman has produced a briefing note giving a summary of EIOPA's proposals in the CP (available [here](#)) and separate briefing notes covering each of these topics in more detail. This briefing note covers EIOPA's proposals in relation to FoS² and FoE³.

EIOPA Proposals

In the context of FoS and FoE, EIOPA has identified several issues with the current requirements. Therefore it is proposing a number of amendments, primarily in relation to the way in which home and host supervisors interact and cooperate with one another, to address these. These proposals are summarised in the following pages.

AUTHORISATION PROCESS

One of the issues that EIOPA has identified is the situation where an insurer has not been authorised by the supervisor in a particular member state to establish a head office in that member state, or where it has decided to withdraw its application in a particular member state based on discussions with the supervisor. That undertaking has then decided to submit an application for head office authorisation in another member state with the intention to sell business exclusively (or almost exclusively) on a FoS or FoE basis in the member state that had originally refused its application. In this way, the insurer could access its target market despite the concerns of the local regulator.

In order to avoid this situation, EIOPA proposes to make changes to the first paragraph of Article 18 of the Solvency II Directive by requiring companies seeking authorisation "*[t]o declare if there had been a formal or informal request for an authorisation to establish an insurance or reinsurance undertaking or other financial undertaking or intermediary in another Member State or third country which has been rejected or withdrawn and the reasons for the rejections or withdrawal*".

¹ Formal request to EIOPA for technical advice on the review of the Solvency II Directive

² FoS refers to the situation where an insurer sells business in another country from its 'home' country i.e. the country in which it is authorised. The home supervisor is responsible for the prudential regulation and

governance oversight of the insurer. The country in which the business is sold is referred to as the 'host' country. The host supervisor is responsible for conduct of business supervision.

³ Under FoE, an insurer establishes a branch in the host country to sell business and service its operations in that country.

MATERIAL CHANGES IN FOS ACTIVITIES

At present, the text of the Solvency II Directive only provides for information to be shared with the host supervisor when an insurer notifies the home supervisor of its intention to write business in another country for the first time. An issue that EIOPA has identified with this relates to insurers communicating their intention to operate in several countries on a FoS basis, but not actually commencing activities in these countries for several years. In such cases, the host supervisor might only become aware that activities have commenced, or that there has been a change in the insurer's business plan, with some delay.

To address this issue, EIOPA proposes to add the following wording to Article 149 of the Solvency II Directive:

“In case of any material change in the business pursued by the insurance undertaking under the freedom to provide services, the insurance undertaking shall inform the supervisory authority of the home Member State immediately. The supervisory authority of the home Member State shall inform the supervisory authority of the host Member State concerned without delay.”

COOPERATION BETWEEN SUPERVISORS

For situations where a single insurer writes material levels of business in several territories, EIOPA has made efforts to establish cooperation platforms with a view to strengthening cooperation between EIOPA and the relevant supervisors. Such platforms allow home and host supervisors to share information and act on commonly agreed measures where appropriate.

In the CP, EIOPA notes that new articles, Article 152a and Article 152b, have been proposed for the Solvency II Directive following on from a review by the European Supervisory Authorities (“ESAs”) and that these should help foster future platforms.

The proposed Article 152a covers the requirements for the home supervisor to notify both the host supervisors and EIOPA of relevant information, including:

- its intention to authorise an insurer that will operate in other countries on an FoS or FoE basis
- where it has identified deteriorating financial conditions or other emerging risks posed by an undertaking carrying out activities on an FoE or FoS basis
- where it has serious and reasoned concerns with regard to consumer protection

Article 152a also notes that the supervisory authorities may refer the matter to EIOPA and request its assistance in the case that no bilateral solution could be found to the issues discussed between supervisors.

In the CP, EIOPA proposes a slight amendment to the proposed Article 152a to strengthen the wording in certain

areas without changing the new notification requirements significantly.

The proposed Article 152b permits the establishment of collaboration platforms. EIOPA now proposes to amend the proposed Article 152b by adding a new paragraph that permits EIOPA to issue recommendations where the supervisory authorities concerned fail to reach a common view. The proposed article would require supervisors to state their reasons for not following EIOPA's recommendations, and to set out steps they have taken or intend to take in order to address the concerns of the other supervisory authorities involved. Where EIOPA deems such steps as not being appropriate, it may make its recommendations public.

Another issue that EIOPA is seeking to address relates to the situation where an insurer does not have a clear understanding of the risks that it faces in the host market. EIOPA notes that there might also be challenges for the home supervisor relating to the need for local market knowledge to effectively regulate an undertaking writing business there on a FoE or FoS basis (for example, the home supervisor might not be very familiar with the types of products sold in the market). The CP notes that there are also concerns that home supervisors may not have to bear the consequences of poor supervision because it might have no impact on the home market. To address this concern, EIOPA proposes to add a new paragraph to Article 36 of the Solvency II Directive. This new paragraph would require home supervisors to cooperate with host supervisors to assess whether the insurer has a clear understanding of the risks that it faces in the host country. This cooperation is required to cover:

- the system of governance, including the ability of management to understand host market specificities, risk management tools, internal controls and compliance procedures for the cross-border business
- outsourcing arrangements and distribution partners
- business strategy and claims handling
- consumer protection

Where appropriate, the home supervisor is also required to inform the host supervisor about the outcome of its supervisory review process, in so far as it pertains to cross-border business, especially where the host country has already raised concerns.

POWER OF THE HOST SUPERVISOR TO REQUEST INFORMATION IN A TIMELY MANNER

A final issue that EIOPA is attempting to address is in relation to difficulty that host supervisors face in obtaining timely answers to questions regarding conduct of business or specific product information that have been directed at insurers writing business in the host country on a FoS or FoE basis. EIOPA notes that such undertakings do not consider themselves obliged to provide such information to the host supervisor on request. As a result, EIOPA proposes that Article 153 of the

Solvency II Directive on the language of information provided to host supervisors would be replaced with a new article on “*Timeframe and language of information*”.

The new article would enable host supervisors to require information (that they are authorised to request) to be supplied to them by the home supervisor or the insurer within a “*reasonable timeframe and in the official language or languages of that State*”. The article also suggests that the home and host supervisors would discuss how to proceed with the information requests to guarantee timeliness, and that the host supervisor would inform the home supervisor if it is liaising directly with the undertaking.

ENHANCED REPORTING REQUIREMENTS AND EXCHANGE OF INFORMATION

EIOPA concludes the FoS and FoE section of the CP by noting that the earlier consultation papers on supervisory reporting and public disclosure addressed the need for improvements in the level of information captured with respect to cross border business. EIOPA also notes that it is considering improving the exchange of information between home and host supervisors via the “EIOPA hub”⁴. As an example, it mentions how Quantitative Reporting Templates containing product specific information for life contracts (S.14.01) could be shared with relevant supervisors.

Summary

Most of the requirements in this section of the CP relate to how home and host supervisors will cooperate with one another. As such, the proposals will not have a direct impact for most insurance companies. However, there may be an indirect impact if there is an increase in information requests arising from this enhanced collaboration. It will be important for such regulatory cooperation to strike a balance between ensuring policyholder protection whilst not impeding the operation of the European single market.

From an insurance company perspective, the key proposals are those relating to the need to inform the home supervisor of intentions to make material changes to FoS business plans. This is something that may already be required in some countries. In Ireland, for example, material changes to business plans need to be notified to the Central Bank of Ireland. Cross border insurers should also be aware that host supervisors will have enhanced power to request certain information in a timely manner.

Companies and groups that are considering applying for an authorisation in a new country should also be aware of proposals in relation to providing information on authorisation refusals and withdrawals in other territories.

⁴ EIOPA HUB is a technical file transfer system established to collect submissions from competent authorities.



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