

Public consultation on the Supervisory Statement on supervision of reinsurance concluded with third country insurance and reinsurance undertakings

Fields marked with * are mandatory.

The European Insurance and Occupational Pensions Authority (EIOPA) published today a Supervisory Statement on supervision of reinsurance concluded with third country insurance and reinsurance undertakings. The statement aims to ensure high-quality and convergent supervision regarding insurance undertakings using reinsurance arrangements with third-country reinsurers both from equivalent and non-equivalent countries.

EIOPA invite comments on the supervisory statement and the expectations put forward there. Comments are most helpful if they respond to the question stated and contain a clear rationale.

To submit your comments, please click on the blue “Submit” button in the last part of the present survey. Please note that comments submitted after 10 October or submitted via other means may not be processed.

Please clearly express in the consultation form if you wish your comments to be disclosed or to be treated as confidential.

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the ESA websites.

General Information

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Actuarial Association of Europe

Name of the Organisation

Actuarial Association of Europe

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Treatment of the comments provided

- Confidential
 Publicly available

Supervisory Statement

1. General comments on the supervisory statement

We appreciate this very good paper summarizing some of the best practices when analyzing reinsurance agreements. It should be noted that the reinsurance market is very complex and there isn't unlimited capacity within the EEA market. There is a benefit for insurers to have a diverse panel of reinsurers and as pointed out a significant amount of capacity is coming from non-equivalent countries such as UK, USA, Bermuda with great expertise, history and market leading risk functions.

The paper is focusing on elements of due-diligence and best practices insurers should adhere to when analysing counterparties; it should be noted that these are predominantly analysed at parent organization level, which in many cases can be in a non-equivalent country. EIOPA should provide greater clarity on that, how insurers should treat parent company vs. legal entity.

Whilst many of the comments in the supervisory statement are reasonable from a risk management perspective and in the context of assessing the compliance of reinsurance arrangements with the relevant articles of the Delegated Regulation, the extent of information required to meet all expectations may become very onerous for cedants, particularly those where there is a broad panel of reinsurers from various different jurisdictions.

Furthermore, whilst it seems reasonable and sensible for EIOPA to look to understand exposures that are outside of its regulatory view in order to gain comfort that there are no unexpected risks or risk concentrations occurring outside of the EU, it would be overly onerous for individual insurers to be relied upon to gather and monitor the onward retrocession of risks by reinsurers outside the block.

It would be beneficial to obtain an understanding as to the extent to which the reinsurance opinion in the actuarial function report is expected to take the content of the supervisory statement into consideration.

Proportionality/materiality need to be considered; clear guidelines in this regard would be helpful. This would be relevant both from perspective of the materiality of a given reinsurance arrangement and the types of undertakings to which these guidelines apply. For example, the additional time and effort required to meet these expectations may be disproportionately onerous for smaller undertakings and captives.

It would be good to get greater clarity on possibilities to delegate some of the tasks to other parties such as EIOPA, National Regulators and/or Brokers. e.g. ensuring that the reinsurance company has a valid licence.

It should be noted that in reinsurance many insurers depend on rating agencies (S&P, AM Best, Moody, Fitch) and rating is one of the key criteria when selecting the right reinsurer.

- Rating drives the standard formula / Internal Model charge and is often perceived as best publicly available indicator of company's stability and ability to fulfill its obligations.

Rating agencies go a great length in analysing the companies during the rating setting process and have access to lot more data and detailed information than insurers. EIOPA should comment to what extent insurers can rely on external information from independent sources such as rating agencies.

Further clarity would be helpful in relation to EIOPA's expectations for this supervisory statement in relation to writing new reinsurance agreements vs maintaining existing reinsurance agreements. Performing continuous (regular or even on renewal) monitoring of reinsurers for either short term contracts which are renewed annually (e.g. catastrophe or similar treaties) or longer term arrangements where a treaty may last for 80+ years (e.g. longevity treaties, reinsured unit-linked business) would be very onerous. For existing treaties, it is unlikely that the reinsurer has any obligation or need to provide updates to cedants where risks are fully or partially passed on to another reinsurer.

It is yet unclear whether there will be a different reporting requirement for EU-equivalent reinsurers and non-equivalent reinsurers as part of Solvency II or any other regulatory deliverable.

Further clarity is needed as to whether the consultation is aimed at ensuring compliance with the relevant articles of the Directive and Delegated regulation or whether it is creating new requirements. Where new requirements and expectations are being introduced, should these be reflected in the actual requirements via regulatory changes?

Section 2: Context and objective

Please include any general comment you might have on this section of the statement

Supervisory convergence may be limited – different NCAs are likely to take different approaches in terms of their implementation of the expectations. Furthermore, undertakings in some countries are likely to be disproportionately affected by these guidelines. For example, the Irish market has more dependence on UK /Bermudian reinsurance markets than undertakings in other Member States.

It seems against the spirit of equivalency under Solvency II if this supervisory note is now asking to treat reinsurance placed under equivalent regimes differently to those placed with EU markets. Indeed, it is unclear if this is consistent with Article 172 (3) of the directive. It is unclear whether the intention here is to ensure that insurers gather information for EIOPA from outside of EIOPA's regulatory view or if this is to preempt the risk that equivalent regimes cease to have equivalency. If it is the latter, then it is worth noting that the UK has proven that even EU membership does not ensure that a country will not become a non-equivalent regime within a short timeframe.

As mentioned in the section; the reinsurance world is highly complex and reinsurance companies get capital from both traditional and "non-traditional" sources. It might be highly ambitious to be able to say that a specific third country satisfies EU rules and gains equivalence, and such reinsurer can be treated as EU reinsurer despite significant exposure with its parent company, which might not be in the EU-equivalent country. Are you planning to analyze the reinsurers or countries at reinsurer legal entity level or parent company level?

2.1. Please include any comment you might have on paragraph 2.1. of the document

Questions arise about the dynamics of the regulation. Will EIOPA be responsible for updates e.g. if a non-EU country changes its legislation, how quickly will EIOPA review the new regulation?
Many reinsurance agreements are subject to a very long risk emergence; what happens if EIOPA agrees the equivalence, but at some point in the future upon a review changes its view and remove the equivalence?
How long notice will Insurers get?

2.2. Please include any comment you might have on paragraph 2.2. of the document

Will the list of assessed countries be updated regularly? How will EIOPA monitor regulatory changes in all these countries in a timely manner?

2.3. Please include any comment you might have on paragraph 2.3. of the document

2.4. Please include any comment you might have on paragraph 2.4. of the document

Is it understood that once EIOPA approves equivalence for some “third-country” all national regulators have to recognize them as such? Or can any national regulator impose additional technical requirements, which may invalidate the equivalence status?

2.5. Please include any comment you might have on paragraph 2.5. of the document

It would be helpful if further clarity could be provided on the scope of the requirements, whilst section 2.5 provides an indication of the scope in relation to what reinsurers are included, and 2.6 provides an indication that retroceded business may not be subject to these expectations, it is not clear what EIOPA's expectations on proportionality, materiality, intra-group vs external reinsurance agreements, expectations on regulators (against expectations on industry), and the cases where retroceded risks would fall under this note.

2.6. Please include any comment you might have on paragraph 2.6. of the document

We do not understand how the third-party equivalence relate on the business model. Please clarify. Does it mean that it could be that equivalence is given only for the primary reinsurance and not for retro? E.g. third-country reinsurers are considered EU-equivalent but only for primary reinsurance and not for retro?
In our opinion the equivalence decision should be independent from specific business models.

Section 3: Assessment of the business rationale for using third-country reinsurance and early supervisory dialogue

Please include any general comment you might have on this section of the statement.

3.1. Please include any comment you might have on paragraph 3.1. of the document

Reinsurance agreements are already subject to intense analysis by the actuarial function and regular updates/opinions are provided in the ORSA and/or actuarial function report. Please clarify what role you see for the actuarial function in assessing the quality of the reinsurance company in addition to analysing the quality of the reinsurance agreement with regards to their effect on the cash-flows.

3.2. Please include any comment you might have on paragraph 3.2. of the document

It should be noted that significant amount of the reinsurance capacity is currently coming from non-EU countries (US, UK, Bermuda etc.). These countries currently hold an equivalence, however if this is to be changed at some point due to either local regulatory change or change in EU technical assessment it can present a problem for the insurers as sufficient capacity in some specific business lines can be obtain only on certain markets.

3.3. Please include any comment you might have on paragraph 3.3. of the document

The concept of proportionality should be clarified with respect to reinsurance conclusions. Can EIOPA also provide further clarity on expectations over pre-authorisation? Examples of what this could cover include when the engagement should begin and the nature of this engagement. The supervisory statement would benefit from the use of real-life examples. As reinsurance capacities sometimes need quick decisions, the process with the NCAs should respect practical needs.

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Section 3: Assessment of the Insurance undertakings risk management system regarding the use of third-country reinsurers

Please include any general comment you might have on this section of the statement.

Insurers have quite sophisticated methods of analyzing the reinsurers. In addition, in non-life these agreements are often agreed upon via brokers, who conduct their own analysis of the counterparty's quality. Would EIOPA accept transfer of some of the due diligence to brokers? (e.g. ensuring that reinsurer has valid license). EIOPA should also consider a proposal when market doesn't provide sufficient capacity to reinsure critical infrastructure. Many major reinsurers have declared that they will no longer provide capacity to "dirty" energy, however many countries do need insurance and reinsurance capacity for their critical infrastructure and cover during the transition period to greener alternatives. In the absence of national or EU-wide solutions the insurers will either have to significantly cut their exposure or seek alternative providers in third-countries.

3.5. Please include any comment you might have on paragraph 3.5. of the document

We understand that the intention is that proportionality/materiality would be considered when including these risks in the ORSA (as opposed to automatically including all third country reinsurance agreements). We suggest rewording to clarify that the ORSA captures material risks / arrangements and that the ORSA is focused on nature of risk as opposed to the fact that it is simply from 3rd country jurisdiction.

3.6. Please include any comment you might have on paragraph 3.6. of the document

For point (a) we note that there is a significant amount of effort if trying to detail this for retrocessions (if it is practicable as it relies on the reinsurer (and further reinsurers) to provide data). It is also unclear whether the other expectations listed are not already covered when considering the SII criteria?
Insurers currently already analyse the reinsurer, but mainly at the company's parent level at which the rating is typically assigned. It is highly unlikely that insurers will know or will be able to find out all the various reinsurers retrocessions, capital arrangements and how the entire organization is structured.

3.7. Please include any comment you might have on paragraph 3.7. of the document

3.8. Please include any comment you might have on paragraph 3.8. of the document

3.9. Please include any comment you might have on paragraph 3.9. of the document

3.10. Please include any comment you might have on paragraph 3.10. of the document

3.11. Please include any comment you might have on paragraph 3.11. of the document

This is typically written in the reinsurance agreement, if reinsurer rating falls below certain level (typically A (S&P)), the contract may be terminated/commuted.

3.12. Please include any comment you might have on paragraph 3.12. of the document

It's very unlikely that an insurance undertaking would write material reinsurance contracts with a reinsurer not rated by one of the major rating agencies or without a significant collateral.

3.13. Please include any comment you might have on paragraph 3.13. of the document

Commentary on monitoring concentrations (3.13) and limiting exposures to certain countries (3.21) appear reasonable from a risk management perspective. However, in practice, insurers in some jurisdictions (e.g. Ireland) can be dependent on reinsurers from certain countries (e.g. Bermuda, U.K.) for a number of reasons. Were exposure to these markets limited, undertakings in this situation would likely struggle to find alternative cover from other jurisdictions. We argue that this expectation of avoiding concentrations should be balanced against the practicality and availability of alternative solutions.

3.14. Please include any comment you might have on paragraph 3.14. of the document

3.15. Please include any comment you might have on paragraph 3.15. of the document

3.16. Please include any comment you might have on paragraph 3.16. of the document

Section 3: Assessment of the reinsurance agreement

Please include any general comment you might have on this section of the statement.

3.17. Please include any comment you might have on paragraph 3.17. of the document

It appears that there are additional criteria noted here when compared to articles 209-211. Can EIOPA clarify their expectations as it is vague in specifics relative to collateral and termination?

3.18. Please include any comment you might have on paragraph 3.18. of the document

Expectations around monitoring onward retrocessions may be unrealistic/impractical. In many cases, cedants are unlikely to have any control or oversight over onward retrocession of ceded risks. This information can be difficult to obtain and its relevance varies by nature of transaction. It also enables reinsurers to manage and transform risks similar to direct insurers.

Whilst comments around action plans and remediation prior to insolvency appear sensible, in practice, insolvency can arise very quickly and appropriate stage-based mediation plans may be difficult to implement in practice, even when there are specific provisions inserted into a reinsurance agreement in respect of termination, commutation, etc.

We would expect some considerations to differ depending on whether the third country is equivalent or not. For example, if the reinsurer is from an equivalent country, it will have to comply with solvency rules that compare with Solvency II and should take into account the quality of its retrocessionnaires. Therefore, in this case, the analysis of further retrocessions (3.18) would not be as crucial. It should be further noted that information about reinsurer’s capital structure, retro agreements (internal/external) is sensitive and cannot be often obtained and unwinding the whole company’s structure should be outside of the scope – especially if some credible third party independent agency (such as rating agencies) form a view on the credit worthiness of the entity.

There is lot more conditions insurance undertakings should consider apart from those listed in the paragraph; such as limits, sublimit, exclusions, territories, credit worthiness, notifications, run-off provisions, risk-transfer criteria etc.etc.

3.19. Please include any comment you might have on paragraph 3.19. of the document

3.20. Please include any comment you might have on paragraph 3.20. of the document

Section 3: Tools to mitigate any additional risks

Please include any general comment you might have on this section of the statement.

3.21. Please include any comment you might have on paragraph 3.21. of the document

These represents a good list of things insurers should put in the contract wording; however if there is a lack of capacity on the market and insurers need desperately capacity it is significantly more difficult to influence the T&C.

We propose that EIOPA clarify that any action requests from NCAs should be subject to outcome of dialogue.

Part II: Impact assessment

Please include any comment you may have on Section 1.1. Procedural issues and consultation of interested parties

Please include any comment you may have on Section 1.2. Problem definitions

Please include any comment you may have on Section 1.3. Objective pursued

Please include any comment you may have on Section 1.4. Policy issue and options

Please include any comment you may have on Section 1.5. Evidence

Please include any comment you may have on Section 1.6. Comparison of options

Please include any comment you may have on Section 1.7. Conclusion

General comment

Publishing the paper with best practices is a good idea, it can help insurers and reinsurers to check their processes and updated their existing practices where necessary.

Submission of Comments

Please submit your comments by pressing the "Submit" button below.

Contact

[Contact Form](#)