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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Insurance) Financial Services Attachés
Subject:	Solvency II: Working Party on 20.10.23 - Presidency non-paper on EIOPA powers in the Solvency II review



Presidency non-paper on EIOPA powers in the Solvency II review

The following points summarize the articles where EIOPA gains new prerogatives, the views of the institutions regarding the dialogues and the implications of the different tools proposed.

Article 144.b) Supervisory powers to remedy liquidity vulnerabilities in exceptional circumstances.

Paragraph 3 a) (line 612a 4CT) introduced by the Parliament (Political) introduces a possibility where EIOPA, after consulting the ESRB, considers that the exercise of the power referred to in paragraph 3 by the competent authority is excessive. In this case it shall issue an opinion and recommend the supervisory authority concerned to review its decision.

Article 152.b) Collaboration platforms (Political).

1. Modification of paragraph 1 by the Parliament (line 647b 4CT): The Parliament gives power to EIOPA to set up and coordinate collaboration platforms in case of significant cross-border activities.
2. New Paragraph 5 (line 648 4CT): The Commission gives the possibility to EIOPA to assist on its own initiative to the relevant authorities in case of disagreement on a collaboration platform. The Council takes away the possibility of EIOPA assisting on its own initiative, so EIOPA could only act at the request of any relevant authority. The Parliament goes beyond the Commission proposal and changes the possibility with a legal obligation (EP changes the “may” for “shall”).
3. New Paragraph 6 (lines 649 and 649a 4CT): The Commission gives the possibility to EIOPA to initiate and coordinate on-site inspections on its own initiative. The Council takes away the possibility to EIOPA to initiate and coordinate on-site inspections on its own initiative. Instead, EIOPA could issue a recommendation to the home NSA to consider the concerns of other NSA and to launch a joint on-site inspection, where EIOPA would be invited. The Parliament agrees with the Commission.
4. Sub-paragraph 3, 4 and 5 of paragraph 6 for Council (lines 649c, 640d, 649e and 640f 4CT), new Paragraphs 6 a) and b) by Parliament (lines 649a and 649b 4CT) : Both institutions agree that in case the NSA concerned fail to reach a common view in the collaboration platform within a time limit established by EIOPA, EIOPA may issue a recommendation to the NSA concerned and if that NSA does not comply with that recommendation within two months, it shall state the reasons including the steps it has taken or intends to take in order to address the concerns of the other supervisory authorities involved. However, the Council only gives EIOPA power to assess those steps and decide whether they are sufficient and appropriate whereas the Parliament continues stating that if they are not deemed appropriate, EIOPA shall make its

recommendation public, including the name of the undertaking or undertakings concerned, with the reasons therefore and the proposed steps to be taken.

New article 159 a) Paragraphs 3 and 4: Additional requirements related to significant cross-border activities (Technical) (lines 654-668 4CT).

There is an essential agreement between institutions.

They agree that if the supervisory authority of the home Member State accepts to carry out a joint on-site inspection, it shall invite EIOPA to participate. Where the supervisory authorities disagree on the conclusions of the joint on-site inspection, either of them may, refer the matter to EIOPA and request its assistance. If, within the two-month period any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the supervisory authority of the home Member State shall defer the adoption of the final conclusions of the joint on-site inspection and await any decision that EIOPA may take and shall adopt the conclusions in conformity with EIOPA's decision. All supervisory authorities concerned shall recognise those conclusions as determinative.

Also, where the supervisory authority of the home Member State refuses to carry out a joint on-site inspection, it shall explain in writing the reasons for such refusal to the requesting supervisory authority. Where supervisory authorities disagree with the reasons for refusal, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation 1094/2010.

Possible implications of the different tools proposed

In most cases, when there are disagreements, it is proposed that EIOPA issues a recommendation, or that it acts as a mediator. Both have different implications for the competent authorities.

Recommendations, regulated in article 16 of Regulation (EU) No 1094/2010, are addressed to one or more competent authorities (or to one or more financial institutions), and imply that the competent authorities shall make every effort to comply with those in 2 months. If the competent authority does not comply or does not intend to comply, it shall inform EIOPA, stating its reasons and EIOPA shall publish it (in every case, it is not discretionary). EIOPA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying.

Article 19 of Regulation (EU) No 1094/2010 concerns the settlement of disagreements between competent authorities in cross-border situations. Mediation is possible only in cases specified in the legislative acts. The implication of mediation by EIOPA are that if the competent authorities concerned fail to reach an agreement within the conciliation phase EIOPA may take a decision requiring them to take specific action or to refrain from action to settle the matter, with binding effects for the competent authorities concerned. EIOPA shall set out the nature and type of disagreements between competent authorities, the agreements reached, and the decisions taken to settle such disagreements in its report.

The possibility of a non-binding mediation (Article 31 of Regulation (EU) No 1094/2010) also exists. EIOPA may initiate these proceedings without empowerment provided in sectoral

legislation upon request of a competent authority or on its own initiative. The outcome of this mediation is a non-binding opinion proposed by the Mediation Panel and adopted by the Board of Supervisors.

Opinion is a tool regulated in Article 16a of Regulation (EU) No 1094/2010, which states that EIOPA “may, upon a request from the European Parliament, from the Council or from the Commission, or on its own initiative, provide opinions to the European Parliament, to the Council and to the Commission on all issues related to its area of competence” but an opinion cannot be targeted to a competent authority, as EP states in Article 144b par 3a).