

The European Insurance and Occupational Pensions Authority (EIOPA) brings out its own 'SPoRs' plus a RRP proposal

What does EIOPA's own "supervisory principles on relocations" (SPoRs) plus the proposal for a "recovery and resolution plan" (RRP) regime mean for (re)insurers?

On 11 July 2017, Frankfurt based EIOPA released an "Opinion on supervisory convergence in light of the United Kingdom withdrawing from the EU" (the **EIOPA Opinion**)¹. This legal instrument is addressed to national supervisory authorities, in particular those within the EU-27, but also those within EEA-EFTA Member States. The EIOPA Opinion thus sets out a common "Supervisory Approach to the Relocations from the United Kingdom" and will affect BREXIT-proofing and relocation plans.

The EIOPA Opinion sets similar SPoRs to those that were recently communicated by EIOPA's sister European Supervisory Authority (**ESA**), the European Securities and Markets Authority (**ESMA**). It also sets a similar tone and draws inspiration from the continuing statements from the European Central Bank (**ECB**), acting in its capacity within the Single Supervisory Mechanism (**SSM**) of the Eurozone's Banking Union.

Part 1 of this Client Alert assesses the EIOPA Opinion, its SPoRs and how they compare to those SPoRs set by ESMA in its "General Opinion" from 31 May 2017 (the **ESMA General Opinion**)² plus the statements from the ECB-SSM.

What is important to note is that the SPoRs of EIOPA, ESMA and the ECB-SSM aim to stand sufficiently on their own and without the need of additional legislative instruments. For further background on the ESMA and ECB-SSM SPoRs and what it means for BREXIT-proofing in the banking sector please see our recent Client Alert³ on this development.

Part 2 of this Client Alert looks at the EIOPA's "Opinion to Institutions of the European Union on the harmonisation of Recovery and Resolution Frameworks for (re)insurers across the Member States" (the **EIOPA RRP Opinion**)⁴ published on 5 July 2017. This will likely have a transformative effect for (re)insurers.



¹ Available: https://eiopa.europa.eu/Publications/Opinions/EIOPA-BOS-17-141%20Opinion_Supervisory_Convergence.pdf

² Available: https://www.esma.europa.eu/sites/default/files/library/esma42-110-433_general_principles_to_support_supervisory_convergence_in_the_context_of_the_uk_withdrawing_from_the_eu.pdf

³ See: <http://www.bakermckenzie.com/en/insight/publications/2017/08/eu-banking-union-spors>

⁴ Available: https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_%28re%29insurers.pdf

Regulatory and supervisory action in this area is likely to be particularly important given that RRP regimes for (re)insurers, to the extent they exist at the national level, remain rather fragmented. This is especially telling when compared to the banking sector and supervisory policymakers' priority of making it "safe to fail". Those priorities translated first into relevant national regimes that were put in place successively after the start of the 2008 global financial crisis (**GFC**) and ultimately into the current EU BRRD Regime and the institutional pillars of resolution authorities.

Whilst the EIOPA RRP Opinion does not, in its current form, propose an equivalent to the EU's 'BRRD Regime' and the Banking Union's Single Resolution Mechanism (**SRM**), a number of parallels do exist. As an Opinion, the proposal for a RRP regime for (re)insurers is still at the infancy of what will likely be quite an interesting and transformative workstream. Those (re)insurers that are likely to be caught in the scope of the proposals may want to already begin scenario planning implications and how to interact or join the conversation with policymakers so as to shape the future RRP regime. Part 2 of this Client Alert highlights six scenarios of how the EIOPA RRP Opinion might take shape in terms of its scope of application.

Part 1 - The EIOPA Opinion, its own SPoRs and how it compares to ESMA and SSM SPoRs

EIOPA, as per its founding documentation, the EIOPA Regulation⁵, is tasked with building a common EU supervisory culture based upon consistent supervisory practices and approaches. This duty to actively promote supervisory convergence is echoed across the other ESAs as well as the SSM and SRM pillars of the Eurozone's Banking Union. National competent authorities and national supervisory authorities (collectively herein, **NCAs**) that make-up the European System of Financial Supervision (**ESFS**) are equally tasked with making supervisory convergence a reality.

Scope of the EIOPA Opinion

The SPoRs introduced by the EIOPA Opinion thus seek to apply supervisory convergence to the supervision of those (re)insurance undertakings that are subject to the "**Solvency II Regime**"⁶. However, EIOPA's mandate is not limited to just the insurance sector, but equally extends to the pensions sector.

It remains to be seen whether EIOPA will publish similar SPoRs for the breadth of pension funds and other institutions of occupational retirement provisions (**IORPs**) that fall within its regulatory and supervisory mandate. With the provisions of the

⁵ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁶ Comprised of:

- Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155); and
- Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.01.2015, p. 1).

EU's IORP Directive⁷ requiring transposition by Member States, i.e. implementation into national legislative/regulatory regimes, by January 2019, it is conceivable that EIOPA might issue a standalone Opinion for IORPs /pension funds. This is perhaps likely as the UK will from March 2019 become a "third-country" for EU regulatory purposes. Any IORP/pension fund focused Opinion would also assist in advancing pension related workstreams in the EU's Capital Markets Union (CMU) project, which is also (currently) scheduled to be finalised by 2019.

In any event, the EIOPA Opinion, its SPoRs set in five headline "**Principles**" are likely to have different degrees of impacts on different types of (re)insurers even if they aim to largely apply to all (re)insurers regardless of size or complexity of their business model. Some of those businesses caught by the EIOPA Opinion may also be concurrently caught by the SPoRs communicated by other members of the ESFS across other sectors.

Those other relevant SPoRs include those issued by ESMA and the ECB-SSM as supplemented by further "Sector Specific Opinions" that were published on 13 July 2017 and which are covered in a separate Client Alert. All the various SPoRs issued by the various EU and national authorities in the ESFS are clear that the timing on obtaining regulatory approvals or variations of regulatory permissions is likely to be protracted.

Timelines might be an issue for those looking to relocate

The Solvency II Regime permits "passporting", i.e. freedom of establishment and freedom to provide services from one EU Member State to another. Once the UK leaves the EU and becomes a third-country, absent a bespoke agreement, this right is lost. As with other parts of financial services, relocations will mean converting existing passported branches into subsidiaries or setting up new subsidiaries in the EU-27. A number of large insurance market participants have already begun this process.

As a result, the EIOPA Opinion applies to both those entities that have already begun to relocate in as much as those embarking on that journey. (Re)insurers are reminded that regulatory applications take time in their own right, but that due to BREXIT leading to more volumes of applications and the SPoRs requiring each application to be subjected to greater scrutiny, supervisory resources may be constrained and thus timelines might be protracted. Certain insurance supervisors, even where cross-border supervisory colleges exist, may be put under pressure and this could also extend timelines further. In short, (re)insurers should plan to submit applications with a requisite degree of leeway.

Equally, as in the banking sector, the race for relocating firms to secure local talent across markets may also prove an issue for (re)insurers. This will notably pose an issue for those areas where the EIOPA Opinion requires a relocating firm to retain suitable amounts of "local staff" exercising key regulated positions. Competition for staff across challenger financial centres is already heating up as some businesses move positions as opposed to persons to the EU-27.

⁷

Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (Text with EEA relevance) OJ L 354, 23.12.2016, p. 37–85

Common concepts and objectives yet differences in the SPoRs

The ESMA General Opinion and the EIOPA Opinion share a number of common objectives and concepts. One crucial difference is that the EIOPA Opinion is (currently) worded specifically with the UK in mind. In contrast, the ESMA and ECB-SSM SPoRs are 'jurisdiction agnostic', i.e. they apply to situations and relocations of firms moving from the UK as well as those that are "third-country entities" (TCEs) moving from non-EU jurisdictions to the EU-27.

The ESMA SPoRs and its specific headline Principles were limited to nine⁸. EIOPA's SPoR's and the relevant headline Principles are limited to the five items discussed below. These five items are in turn comprised of 28 paragraphs often aggregating concepts and SPoRs in the ESMA General Opinion into one headline EIOPA Principle that contains multiple SPoRs. Conceptually, there is a large degree of overlap between the core supervisory objectives of the ESMA General Opinion and the EIOPA Opinion. These Principles of the EIOPA Opinion are explained in turn below:

Principle 1 - Authorisations and approvals

This Principle 1 is split between three themes that largely echo those stated in Principles 1 and 2 of the ESMA General Opinion. By comparison however, the EIOPA Opinion's approach on own funds and internal models (see below) is more pronounced than the SPoRs introduced by ESMA.

In the EIOPA Opinion these themes are addressed in Principle 1 as follows:

- **No automatic recognition of existing authorisations:** is foreseen and the supervisory expectation in this EIOPA Principle compared to the ESMA SPoR is much more pronounced that each application must be reviewed on its own merits;
- **Authorisations and approvals:** EU-27 Member States should ensure that they, i.e. the relevant NCAs, have a "sound authorisation process" in place. This means NCAs should have processes that are risk-based, adequately resourced so as to appropriately deal with the complexity of any new authorisation and on-going supervision. This also includes adequate resourcing to conduct inspections and evaluate additional information. Authorisation and supervisory teams are encouraged to interact to ensure effective supervision. Individual supervisory authorities are encouraged to exchange information on approvals or authorisations with another where permitted; and
- **Own funds and use of internal models:** the recognition of own funds or the use of an internal model, even if previously approved, should be subjected to a new approval process before use. This ties-in with the concept of no automatic recognition described above. The EIOPA Opinion reminds market participants that a change in the risk profile, risk management system or use of an internal

⁸ The Principles, which are explored in further detail in our separate Eurozone Hub Client Alert on the matter, include:

- no automatic recognition of existing authorisations;
- authorisations granted by EU-27 NCAs should be rigorous and efficient;
- NCAs should be able to verify the objective reasons for relocation;
- special attention should be granted to avoid letter-box entities in the EU-27;
- outsourcing and delegation to third-countries is only possible under strict conditions;
- NCAs should ensure that substance requirements are met;
- NCAs should ensure sound governance of EU entities;
- NCAs must be in a position to effectively supervise and enforce EU law; and
- need to implement coordination to ensure effective monitoring by ESMA.

model would equally trigger a formal assessment by the relevant NCA. This internal model approval process extends to existing subsidiaries in the EU-27 or any other "new venture" irrespective of the legal form.

Principle 2 - Governance and risk management

The contents of EIOPA Principle 2 correspond to those set out in Principles 6 and 7 in the ESMA General Opinion, and stipulates the following themes:

- **Mind and matter:** NCAs must scrutinise whether the applicant's governance arrangements ensure that effective decision-taking and risk management takes place in the EU Member State of authorisation and allows for proper supervision. Again this is more prescriptive than the concepts in the ESMA General Opinion. The prohibition on "empty shell" entities are also addressed in this EIOPA Principle;
- **Sufficient and proportionate substance:** applicants must demonstrate an appropriate level of corporate substance, proportionate to the nature, scale and complexity of the planned business. This extends to the appropriate presence of administrative, management or supervisory board members as well as those "key function holders" who must be able to dedicate sufficient time to their responsibilities. This is a concept that already exists in EU financial services regulatory law but the prominence it receives in this EIOPA Principle is noteworthy;
- **Sufficient local market knowledge and staffing:** in strong contrast to the ESMA General Opinion, the EIOPA Opinion requires that the applicants maintain an appropriate level of "local staff" employed within the relevant entity. The appropriate level of "local staff" must be commensurate to the nature and amount of business being run from that relevant entity. A similar concept exists in respect of the NCA needing to be satisfied that an applicants' senior management has sufficient and proper knowledge of local market specifics, products and risks. We assume that NCAs will consider whether the "local staff" requirement is fulfilled by looking at the citizenships held, the length of relevant service within the jurisdiction and the educational and professional background of the staff and whether they actually reside in that Member State. We anticipate that this might lead to some discussions with some NCAs on the nexus between citizenship of staff and the jurisdiction of the relevant (re)insurance entity as well as residence. We would anticipate that certain such as Luxembourg might focus less on residence given the amount of financial services workers that live/work cross-border but that other NCAs might use residence as a more determining factor. In any event this requirement may put pressure on securing appropriately qualified resources in certain jurisdictions;
- **Sufficient supervisory scrutiny and control in applicants' transferring risk to participating undertakings or other entities:** similar to the prohibitions on certain booking models and letter box entities, Principle 2 of the EIOPA Opinion tasks NCAs with the assessment and scrutiny of the relevant business model and risk management capacity of relevant undertakings. This also includes assessing the effectiveness of risk transfer arrangements and the related risks. Consequently, EIOPA Principle 2 aims to limit the "disproportionate" reinsuring of risk to TCEs outside of the EU-27. Relevant entities within the EU-27 are required to maintain a minimum retention level of

risks written by the EU-27 authorised entity. The EIOPA Opinion states that this minimum retention ratio could be 10% of the business written. This limits the ability to transfer or otherwise book risks fully to a TCE. The EIOPA Opinion reserves its right to issue further "supervisory expectations" that amend this minimum threshold. Moreover, NCAs are required to challenge the risk transfer by requiring an assessment of:

- impact of the risk transfer on the undertaking's counterparty risk and currency risk;
- the impact on asset composition; and
- the extent to which the reinsurance recoverable will be collateralised and the strength of the (re)insurer and the capital proposed to be held by the undertaking the Member State of authorisation.

This may cause some issues for arrangements where backstops supporting the new or converted EU-27 undertaking are based in third-countries and thus the UK.

Principle 3 - Outsourcing of critical and important activities

The contents of EIOPA Principle 3 follow the prohibitions and stipulations in the ESMA General Opinion, and specifically Principles 4 and 5 therein. The SPoRs therein can be grouped into the following themes:

- **Regulatory outsourcing and delegation to third-countries:** should be limited and not detract from sufficient control and supervision by the EU-27 entity in respect of the outsourced/delegated services provider. Outsourcing/delegation to TCEs should also not limit NCAs ability to effectively supervise the business of the EU-27 entity;
- **Regulatory outsourcing and delegation of "critical, important or key functions or activities" is only permitted (in keeping with much existing EU requirements) where it does not:**
 - materially impair the quality of the system of governance;
 - unduly increase operational risk;
 - impair NCAs' ability to monitor compliance;
 - undermine continuous and satisfactory service to policyholders;
- **Outsourcing requires a designated oversight function for outsourcing key functions and preventing conflicts of interest:** in keeping with EIOPA Guidelines on systems of governance and other national and EU regulated outsourcing requirements; and
- **'Critical or important functions' in an insurance undertaking:** such as the design and pricing of insurance products, investment of assets or portfolio management, claims handling, compliance function, internal audit, accounting, risk management or actuarial support, provision of data storage or the provision of on-going systems maintenance or support are highlighted as requiring specific attention by the NCA when it is notified of the intended outsourcing.

Undertakings with "simple risk profiles" or "smaller insurance business" may outsource a significant part of their key functions. Those undertakings that are assessed as having a "complex risk-profiles" or "large scale of business" may not do so.

Principle 4 - On going supervision

The SPoRs stipulated in EIOPA Principle 4 are very much similar to those contained in Principle 8 of the ESMA General Opinion. In summary these stipulate that NCAs should be able to have sufficient access to and resources to review and evaluate the (re)insurance undertakings' strategies and processes. NCAs are required to ensure that initial conditions set at authorisation are met on continuous basis, including those relating to outsourcing. EIOPA Principle 4 also reiterates that NCAs should be empowered with the necessary powers to remedy weaknesses or deficiencies in relation to a regulated person's compliance obligations.

In addition to ad-hoc supervisory powers, EIOPA Principle 4 is unequivocally clear, and follows requirements set out in the Solvency II Regime that individual NCAs or supervisory colleges of NCAs should:

"Where needed to ensure proper on-going supervision, NCAs may consider whether the establishment of an EU holding company would promote and facilitate the coordination of group supervision at European level."

In contrast to the ESMA General Opinion, EIOPA Principle 4 is clear that NCAs should exercise a specific supervisory review "...in the first years following authorisation to review the consistency with the initial business model, its underlying assumptions and financial projects in order to assess whether the conditions of authorisation are being continuously met." In contrast to the banking sector, the NCAs responsible for supervising the EU insurance sector have yet to publish common principles/rules relating to on-site inspections and thematic reviews.

Principle 5 - Monitoring by EIOPA

As with ESMA General Opinion Principle 9, EIOPA Principle 5 aims to empower EIOPA to deliver on the convergence objective in the EIOPA Regulation. EIOPA's tools in delivering this objective include the monitoring and application of a risk-based approach so as to direct future convergence efforts.

These efforts can take the shape of different policy tools and the EIOPA Opinion refers to the use of bilateral engagements, further legal instruments including opinions and commencing investigations. Unlike the ESMA General Opinion, EIOPA Principle 5 does not require it to establish specific new tools or fora such as the Supervisory Coordination Network that ESMA is required to run.

Part 2 - The EIOPA RRP Opinion, impact and differences to other RRP workstreams

The EIOPA RRP Opinion calls upon the institutions of the EU to establish a minimum harmonised yet comprehensive RRP framework for (re)insurers (the **RRP Minimum Framework**). The body of the EIOPA RRP Opinion provides the rationale for a solution. The bulk of the proposed measures are set out in Annex III to the EIOPA RRP Opinion.

The supervisory rationale for a RRP regime specific to (re)insurers is clear: national frameworks are either fragmented or they do not exist. EIOPA states that any RRP Minimum Framework would serve to strengthen protection for policyholders and maintain financial stability of the EU. The EIOPA RRP Opinion thus proposes that any RRP Minimum Framework creates a common "blueprint" of what a RRP regime for (re)insurers should look like. Since this (current proposed) approach adopts a "minimum harmonisation" proposal Member States would still be left with requisite flexibility to introduce additional measures commensurate with the needs of national markets. In many ways this suggests that EIOPA is approaching the situation in a much more tempered manner than national and EU policymakers did in the aftermath of the start of the GFC.

A comparison of the scope (including gaps) of the current Solvency II Regime powers as compared to proposed RRP Minimum Framework is set out in a comprehensive table in Annex V to the EIOPA RRP Opinion. Going forward, one might expect that Annex V might be expanded to benchmark actual versus the proposed scope of measures as well as the gaps flagged therein and how these compare with the EU's BRRD Framework.

The approach set out in the RRP Minimum Framework builds upon feedback from 29 stakeholders⁹ obtained during a public consultation process as well as progress at the international level. Details of the consultation feedback are contained in Annex IV to the EIOPA RRP Opinion. Input from the international level primarily stems from the relevant workstreams of the Financial Stability Board as well as the work of the International Association of Insurance Supervisors in relation to identification, mitigation and management of risks relevant to Globally Systemically Important Insurers (**G-SIIs**). The EIOPA RRP Opinion however proposes that any RRP Minimum Framework would apply to all relevant (re)insurance undertakings and not just those that are categorised as G-SIIs.

What the EIOPA RRP Opinion does not at present do is call for a full equivalent to the BRRD Regime and the SRM. Rather it earmarks future follow-up work for EIOPA as quasi architect of the RRP "blueprint" for (re)insurers to tackle harmonisation efforts. At present this seems a quick win solution as in order to get to a BRRD and SRM equivalent, both EIOPA and the Solvency II Regime would need a number of legislative and institutional changes to form an "Insurance Union" that would complement the "Banking Union" for the Eurozone-19 and possibly complement the integration efforts of the EU-27 in respect of the Capital Markets Union project that is still scheduled to be completed in 2019.

⁹ 14 responses from associations and stakeholder groups (including EIOPA's Insurance and Reinsurance Stakeholders Group (IRSG)), 6 responses from the industry, 3 responses from ministries, 3 responses from others, and 2 responses from NSAs, 1 response from an EU organisation.

Hot Topics

Instead, the EIOPA RRP Opinion aims to adopt a proportional approach and suggests that RRP Minimum Framework should enshrine the following "building blocks". The following table, taken from the EIOPA RRP Opinion, sets this out in further detail:

| RRP Minimum Framework "Building Blocks" | |
|---|--|
| Preparation and planning | 1) pre-emptive recovery planning |
| | 2) Pre-emptive resolution |
| | 3) Resolvability assessment |
| Early intervention | 4) Early intervention conditions |
| | 5) Early Intervention powers |
| Recovery | Solvency II Regime - ladder of intervention - out of scope |
| Resolution | 6) Resolution authority |
| | 7) Objectives |
| | 8) Conditions |
| | 9) Powers |
| 10) Safeguards | |
| Cross-border cooperation and coordination | 11) Cross-border cooperation and coordination arrangements |

What the EIOPA RRP Opinion however does do quite well is make the case, with reinigorated force, on the benefits stemming from the potential harmonisation and improvements of resolution funding as well as the harmonisation and improvements to insurance guarantee schemes. These are both concepts that the EU regrettably tabled in 2012 and which have remained tabled.

This delay in approving EU policy creating a framework for insurance guarantee schemes or to improve the compensation levels set in the Investor Compensation Schemes Directive¹⁰ stems from a redirection of political efforts during 2012 to improve deposit guarantee scheme funding and coverage. That redirect was seen, at the time, as a necessary step for building the Banking Union. The plan to harmonise EU depositor guarantee schemes therefore remains a work in progress. In its most recent iteration, this has been advocated in the form of a proposal for a possible Pillar III for Banking Union in the form of the European Deposit Insurance Scheme (**EDIS**) as a bolt-on to the Banking Union's Pillar II, the SRB¹¹. As a result, the EIOPA RRP Opinion, somewhat flips the order taken on Banking Union and thus aims to get the financing of insurance guarantee schemes and resolution funding agreed and in place prior to focusing on any institutional solutions in a possible Insurance Union.

We will continue to monitor this development as it progresses, but would suggest that affected (re)insurers also begin to discuss, through appropriate channels, involving internal and external project teams and advisers, what these proposed changes could mean in any of the following conceivable scenarios:

¹⁰ Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes OJ L 084, 26/03/1997 P. 0022-0031.

¹¹ For a more in depth discussion of EDIS, the state of play for investor compensation schemes and insurance guarantee schemes that were tabled in favour of some but not comprehensive improvements to depositor guarantee schemes, please see Huertas in "EDIS - The Third Pillar of the EU's Banking Union: Big, bold but can it be beautiful?" which first appeared in 2016 in Volume 31 - Issue 11 of the Journal of International Banking Law & Regulation.

| | |
|--------------------|--|
| Scenario A: | RRP Minimum Framework is introduced as per (current) EIOPA RRP Opinion across whole of EU-27; |
| Scenario B: | RRP Minimum Framework is introduced as per (current) EIOPA RRP Opinion but only in limited Member States of the EU-27; |
| Scenario C: | RRP Minimum Framework is introduced as per (current) EIOPA RRP Opinion but only in Member States participating in the Banking Union (currently Eurozone 19); |
| Scenario D: | RRP Minimum Framework yields to more BRRD Regime style equivalent that is applicable to whole of EU-27; |
| Scenario E: | RRP Minimum Framework yields to more BRRD Regime style equivalent that is applicable but only in limited Member States of the EU-27; |
| Scenario F: | RRP Minimum Framework yields to more BRRD Regime style that is but only in Member States participating in the Banking Union (currently Eurozone 19); |

The EU, the Eurozone and its Banking Union as well as various Member States have in 2017 gained a wealth of experience in "firefighting" in the financial services sector. In contrast to the midst of the GFC, the financial services sector have greater experience in applying a much broader toolkit to ensure systemic institutions are "viable to recover", "safe to fail" or "orderly enough in the failure to be resolved using national insolvency powers".

As evidenced in the GFC, (re)insurers do also get in trouble. Given the significant divergences between how EU Member States handle (re)insurers in stress and the fact that (re)insurers engage in cross-border business and can cause risk propagation to move from wholesale markets to policyholders and thus the 'real economy', EU harmonisation action is needed.

Next steps for (re)insurance firms affected by the SPoRs and the RRP Proposal

The EIOPA SPoRs have set a new and more clearly mapped route on how (re)insurance firms and undertakings will need to structure themselves when relocating to the EU and/or Eurozone as a result of BREXIT or otherwise. In practical terms, this has a number of implications for firms, internal project teams as well as their retained consultants and professional advisers.

As a result, the impact of these two EIOPA Opinions affected firms will need to:

- review existing and pending BREXIT-proofing and relocation plans, some of which might need to be revisited to make sure they comply with the SPoRs;
- allocate sufficient time and resources need to be allocated in order to take account of potentially more invasive supervisory touchpoints along each of the levels of the ESFS. This also applies to the greater supervisory scrutiny of fitness and propriety of individuals, governance and control functions as well as the written policies and procedures underpinning those systems and controls. For BREXIT-proof workstreams, this might mean retaining appropriate legal and regulatory specialists, both within internal and external

project teams that can draft, implement and ensure compliance with EU, Eurozone, respective national levels as well as third-country regimes. This dedicated workstream, whilst needing to be interoperable with license application and relocation workstreams, ought to be run separately so as to have sufficient degree of independence and an ability to challenge assumptions made by those advising on the relocation;

- provision for longer supervisory processing timelines and greater detail in relation to supervisors dealing with reviews and approvals and/or supervisory inspections. For some firms this might also mean taking appropriate advice as to how their business model might be affected by the supervisory priorities of the relevant components of the ESFS, whether there are any quick wins and how to document and embed processes and policies that evidence compliance with the supervisory expectations and the SPoRs; and
- lastly, the EIOPA RRP Opinion is thus both welcome inasmuch as it is timely. The value in a RRP regime for (re)insurers will arise provided such regime recognises the differences in types of (re)insurers and the risk classes and markets they operate in as well as the differences to RRP designed for the banking sector. Consequently, (re)insurers, even who those doubt the benefits or need of a RRP regime, ought to proactively get involved in shaping the debate on those RRP standards that will ultimately be imposed upon them at the risk of being left out and having firm or sector specific items overlooked.

Outlook further ahead

In any event the communications from EIOPA set a decisive tone, one that will also likely factor into both (re)insurers embedding their compliance with Solvency II. The communications will also likely fit in with the separate legislative review workstream of Solvency II's regulatory capital requirement levels which is scheduled to take place during 2018.

Lastly, it is conceivable that EIOPA's Financial Stability Committee, which draws together experts from NCAs and EIOPA will benchmark compliance with the SPoRs as well as progress of the RRP workstreams in EIOPA's twice yearly 'Financial Stability Reports' and a quarterly 'Risk Dashboard' . Those reports and the dashboard are based on a comprehensive analysis of risk and vulnerabilities facing the insurance and IORPs sector, drawing on quantitative and qualitative data and EIOPA, as part of the ESFS shares its findings with other members of the ESFS including the European Systemic Risk Board.

In short, the road to 2019 will be busy for the supervisors as well as those supervised, whether relocating or already in the EU-27.

Hot Topics

If you would like to receive more analysis in relation to the above, including what the EIOPA SPOs and the EIOPA RRP Opinion might mean for specific (re)insurance undertakings within or looking to enter the EU and/or the Eurozone, then please do get in touch with any of our Eurozone Hub key contacts below.

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