

Peer Review on Outsourcing

Final report of the review by peers

EIOPA-BoS-22/383

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ACRONYMS

PRC	Ad hoc Peer Review Committee for Outsourcing
AMSB	Administrative, management or Supervisory Body
CIF	Critical or important operational functions or activities
CSC	Centralised Service Company
DD	Due Diligence
Delegated Regulation/DR	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)
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EIOPA SoG guidelines / GLSoG	EIOPA Guidelines on system of governance (EIOPA-BoS-14/253)
FIAU	Financial Intelligence Analysis Unit
GDPR	General Data Protection Regulation
IAIS	International Association of Insurance Supervisors
ICT	Information and Communication Technologies

KF	Key Functions
KPI(s)	Key Performance Indicator(s)
KRI(s)	Key Risk Indicator(s)
MGA(s)	Managing General Agent(s)
MoU	Memorandum of Understanding
NSA(s)	National Supervisory Authority(ies)
ORSA	Own Risk and Solvency Assessment
PR methodology	Decision of the European Insurance and Occupational Pensions Authority on peer reviews
RSR	Regular Supervisory Report
SFCR	Solvency and Financial Condition Report
SII Directive	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
SPD	Single Programming Document
ToR	Terms of Reference
Undertakings	Insurance and reinsurance undertakings as set out in Article 13 (1) and (4) of Solvency II, respectively.

EXECUTIVE SUMMARY

In the context of enhancing supervisory convergence and in accordance with its mandate, EIOPA regularly conducts peer reviews, working closely with national supervisory authorities (NSAs), with the aim of strengthening both the convergence of supervisory practices across Europe and the capacity of NSAs to conduct high-quality and effective supervision.

Backgrounds and objectives

Based on the EIOPA's two-year peer review work plan 2020-2022 and Single Programming Document (SPD 2021-2023), EIOPA performed a peer review on outsourcing according to Article 30 of EIOPA Regulation¹. The peer review covered the application and supervision by NSAs of the relevant regulatory provisions and guidelines related to outsourcing, considering the timeframe between 1 January 2016 and 31 December 2020 as reference period.

The peer review covered the so called “outsourcing supervisory lifecycle”, and used it as a reference model of the supervisory activities relating to outsourcing. On the basis of the outsourcing supervisory lifecycle, the Peer Review Committee (PRC) developed the assessment questionnaire filled in by the NSAs. The assessment criteria and supervisory expectations are used to structure and present the results of the assessment in this report.

This peer review assessed the overall maturity of the framework implemented by the NSAs to supervise outsourcing by insurance and reinsurance undertakings (undertakings) with the objective to identify gaps, areas of improvements and best practices and to further strengthen consistency and effectiveness in supervisory outcomes.

Main findings

Undertakings bear the ultimate responsibility to carry out their activities, whether they are outsourced or not. Outsourcing can bring some advantages, but at the same time it generally creates, *ceteris paribus*, an additional level of complexity to effective supervision, as it adds an additional layer to undertakings' processes. This complexity relates to the need for NSAs to assess, in addition to the activity/function itself, the conditions surrounding the outsourcing and its related risks (*e.g.* overall governance framework on the outsourcing, reliance on the service provider,

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council on 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.

presence of sub-outsourcing, operational risks of the arrangement such as legal and Information Communications Technology (ICT) risks, etc.). Furthermore, in case the outsourcing encompasses technology-related and technology-enabled functions, further complexity might be added by the technical aspects involved (ICT and legal related) and by the difficulty for NSAs to procure the skillset required to properly supervise the functions outsourced.

The use of outsourcing by European undertakings is increasing, mainly driven by ICT and technology-related outsourcing and the level of outsourcing used by undertakings in the EEA is different, with certain Member States having significantly higher number of outsourced functions per undertaking than others. These differences also help explaining the different levels of maturity of the frameworks implemented in the Member States to supervise outsourcing (namely, in what concerns the definition of CIF and notification requirements), the diverging supervisory practices and the challenges faced by the different NSAs.

Overall, in terms of supervisory practices, the majority of NSAs focus their supervisory assessment at notification, while the others have opted for a lighter notification process with a more intensive ongoing supervision (e.g. ES, EE, DK, HU, IS, LT, LV, NO, NL PT, SE). Only a few authorities presented a robust assessment at notification together with intensive ongoing supervision (e.g. BE, IE, IT, MT). The peer review highlighted also that the supervisory dialogue is the most common supervisory tool used by NSAs. Only in a few cases, NSAs applied fines or formally requested undertakings to amend contracts or to exit from outsourcing arrangements.

As reported above, the level of maturity of the outsourcing frameworks of the NSAs is different across them. This is due to the structure of the market, the level of outsourcing of the various undertakings and the different level of prioritisation in focusing their supervisory oversight on outsourcing *vis a vis* other areas of the Solvency II regulation chosen by NSAs. In relation to the reference period:

- FSC-BG presented an outsourcing framework requiring a substantive improvement. It is noted that FSC-BG published, on 22/07/2021 (outside the reference period), an ordinance on the system of governance of insurers and reinsurers, which implemented the EIOPA guidelines on system of governance in the Bulgarian regulatory and supervisory framework;
- CAA-LU presented an outsourcing framework requiring improvements both in terms of formalisation of the expectations of the CAA towards the market participants and of the supervisory processes of the NSA. An important feature of the model applied by CAA relates to the figure of PSA (*“Professionnels du secteur de l’assurance”*) which are service providers licensed and under the direct supervision of that national supervisory authority. Finally, it is noted that the CAA is restructuring its outsourcing supervisory framework through the approval of a circular letter on outsourcing, a template to be used by undertakings to

perform outsourcing notifications and a much more robust set of internal supervisory processes. As further outlined in the report, Brexit was a key trigger to those changes, as Luxembourg has been selected by a number of undertakings affected by Brexit as an European Hub;

- ASF (PT) presented an outsourcing framework requiring further improvements. Similarly to the other two NSAs above, it is noted that also ASF has restructured its framework on outsourcing through the publication of a Regulatory Standard on System of Governance in April 2022 (outside of the reference period).
- Finansinspektionen (SE) presented an approach to outsourcing supervision with a limited scope particularly when it comes to the supervision of the notification received from undertakings, as they consider outsourcing to be the sole responsibility of the undertakings, with a limited intervention role of the NSA during that phase.

On-site initiatives, which are both time and effort intensive exercises, proved to be the most effective tool to verify the overall governance structure around outsourcing and whether the undertaking is able to comply with Solvency II requirements regarding the outsourced activities. However, the engagement with undertakings through on-site supervision of outsourcing does not seem to be part of the top priorities of the NSAs. Typically, the majority of NSAs do not perform on-site inspections specifically on outsourcing; they review the outsourcing framework of undertakings when they engage with them during the overall review of their system of governance. Some NSAs have performed, with different levels of intensity, dedicated on-site inspections on specific outsourced critical operational functions or activities at the undertaking's (e.g. AT, BE, CZ, DE, ES, IT, MT, NO, NL) or at the service provider's premises (e.g. BE, CZ, DE, FR, IT, LU², MT and NO).

EEA undertakings make extensive use of intra-group service providers (more than 40% of critical or important functions outsourced in the EEA are outsourced intra-group³). Particularly, when the undertakings within the group outsource to intra-group shared service providers, the peer review highlighted the importance of the monitoring role performed by the group supervisors to mitigate the risks that the intra-group service providers might become a single point of failure. Considering the market trends and the practices of undertakings, the peer review highlighted that the continuous monitoring of intra-group service providers from a holistic point of view needs to stay high on NSAs agenda.

In a nutshell, the peer review identified areas of the outsourcing framework and outsourcing supervisory practices to be improved. In some cases, recommended actions to NSAs were issued,

² Limited to the "*Professionnels du secteur de l'assurance*" (PSA) which are service providers directly supervised by the CAA

³ Please note that disclaimers as described in paragraph 2.1.1.1 of the report apply on the calculation of the percentage.

in other cases an action by EIOPA was suggested in order to achieve higher supervisory convergence and/or more clarity of supervisory expectations. Finally, best practices by NSAs were also identified as possible improvements for current established practices on outsourcing across EEA.

Overview of recommended actions

The final report outlines the recommended actions that the PRC has issued to the different NSAs in order to improve specific areas of their outsourcing supervisory lifecycle. Each recommended action⁴ issued as part of this peer review is based on the findings of the assessment carried out by the PRC and has been discussed with each NSA involved. The table below provides an overview of the area of the outsourcing supervisory lifecycle to which the specific recommended action apply. Within each area, the recommended actions towards the NSAs are tailored to their specific situation.

Area of recommended actions	Recommended Actions addressed to the following NSA(s):
OUTSOURCING FRAMEWORK	
<p>For the outsourcing framework, several aspects were considered. Firstly, how the Solvency II Directive (Solvency II Directive) was transposed and how the relevant provisions set out in the Commission Delegated Regulation (EU) 2015/35 (DR) were implemented in supervisory practice. Secondly, it was also considered whether the EIOPA Guidelines on System of Governance, in particular those relevant for outsourcing, were complied with and how they contributed to the concrete processes and procedures in place to supervise outsourcing.</p> <p>The NSAs receiving a recommended action in this area revealed deficiencies in the outsourcing framework applicable during the reference period. FSC (BG) and CAA (LU)⁵ have already started updating their outsourcing framework in 2021 (i.e. beyond the reference period of the peer review) while ASF (PT) has published their Regulatory Standard on System of Governance in April 2022.</p>	<ul style="list-style-type: none"> • FSC (BG) • HANFA (HR) • CAA (LU) • ASF (PT)

⁴ The recommended actions set out in this report, which are addressed to the relevant NSAs, should not be considered per se as EIOPA Recommendations for the purposes of Articles 16 and 30(4) of the EIOPA Regulation or of Article 25(4) of the EIOPA Decision on Peer Reviews

⁵ It is to be noted that FSB-BG and CAA-LU have received only this comprehensive recommended action, which encompasses their overall framework. For this reason, the PRC decided not to address other recommended actions to them, when applicable.

<p>HANFA (HR) is in a different situation: despite having an ordinance in relation to outsourcing of activities or functions which was issued within the reference period and the fact that the actual link to EIOPA’s Guidelines on System of Governance is published on their website, HANFA’s recommended action is to complement this framework with some missing elements relating to the explanatory text included in the EIOPA Final Report on Public Consultation No.14.017 on EIOPA Guidelines on System of Governance.</p>	
<p>OUTSOURCING FRAMEWORK – DEFINITION AND RULES ON CERTAIN TYPE OF OUTSOURCING</p>	
<p>Criteria to identify critical or important functions or activities (CIF)</p>	
<p>Some NSAs are recommended to define and share with the market criteria to classify CIF, taking into account Guideline 60 of EIOPA Guidelines on System of Governance, the explanatory text included in the EIOPA Final Report on Public Consultation No.14.017 on EIOPA Guidelines on System of Governance, and the market specificities.</p>	<ul style="list-style-type: none"> • ICCS (CY) • CNB (CZ) • DGSFP (ES) • Finanstilsynet (NO) • KNF (PL) • ASF (PT) • ASF (RO) • Finansinspektionen (SE)
<p>OUTSOURCING FRAMEWORK – DEFINITION AND RULES ON CERTAIN TYPE OF OUTSOURCING</p>	
<p>Boundaries between outsourcing of delegated authority to underwrite and settle claims and (re)insurance distribution</p>	
<p>Considering Guideline 61 of EIOPA Guidelines on System of Governance, the explanatory text included in the EIOPA Final Report on Public Consultation No.14.017 on EIOPA Guidelines on System of Governance, and the market specificities, some NSAs are recommended to define and share with the market, as well as within the NSA, a clear approach to distinguish between intermediation and outsourcing of delegated authority to underwrite and settle claims and when such outsourcing is to be considered outsourcing of a CIF.</p>	<ul style="list-style-type: none"> • FTNET (DK) • CBI (IE) • Finansinspektionen (SE)
<p>NOTIFICATION PROCESS</p>	
<p>Structure of the notification</p>	
<p>Some NSAs are recommended to define and communicate to the market a notification process in case of “new outsourcing” and “material developments of existing outsourcing”, including a set of minimum information to be notified to the NSA in a structured manner (e.g. through the use of a template) to enable a supervisory assessment.</p>	<ul style="list-style-type: none"> • FMA (AT) • ICCS (CY) • CNB (CZ) • BaFin (DE) • EFSA (EE) • FIN-FSA (FI) • HANFA (HR)

	<ul style="list-style-type: none"> • MNB (HU) • BL (LT) • FCMC (LV) • Finanstilsynet (NO) • ASF (PT) • ASF (RO) • Finansinspektionen (SE) • AZN (SI)
NOTIFICATION PROCESS	
Feedback to the notification (“right to object”)	
<p>Some NSAs are recommended to engage with relevant legislators to have in place, as a pre-emptive power at notification, the right to object the entering into force of an outsourcing agreement, in case the NSA concerned has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place, that cannot be mitigated otherwise.</p>	<ul style="list-style-type: none"> • ACPR (FR) • ASF (RO) • Finansinspektionen (SE)
SUPERVISION OF OUTSOURCING AT NOTIFICATION	
<p>Some NSAs are recommended to develop and make use of internal procedures supporting the supervisory scrutiny of the notification.</p> <p>Supervision at notification means the review of the notification with the objective to verify whether undertakings comply with the regulatory requirements and the adoption of a pro-active approach by sharing concerns and/or requiring the undertakings to implement changes to their outsourcing arrangements and/or to their organisational and governance structures to manage the outsourcing before the outsourcing (or the actions undertaken following a material development) becomes fully operational.</p> <p>In relation to their supervisory practices at notification, MFSA (MT) and Finanstilsynet (NO) have been addressed with specific recommended actions relating to their internal processes and practices.</p>	<ul style="list-style-type: none"> • ICCS (CY) • BaFin (DE) • DGSFP (ES) • FIN-FSA (FI) • ASF (RO) • Finansinspektionen (SE) • NBS (SK) • MFSA (MT) • Finanstilsynet (NO)
DOCUMENTATION AND INFORMATION MANAGEMENT	
<p>Some NSAs are recommended to implement a comprehensive, accessible and structured set of information, typically in the form of a register, regarding outsourced functions and service providers both at undertaking and market level.</p> <p>Such structured set of information should enable the NSA to adequately identify potential risks, namely concentration risks, and</p>	<ul style="list-style-type: none"> • ICCS (CY) • BaFin (DE) • FTNET (DK) • FIN-FSA (FI) • MNB (HU) • CBI (IE)

<p>prioritise supervision of outsourcing of key functions or other CIF to the same service providers.</p> <p>In relation to the already developed structured register of information relating to outsourcing, the PRC has recommended the ACPR to include the information on outsourcing arrangements entered into force before 2016 (and not subject to material change afterward) in order to have a more holistic picture of the market.</p>	<ul style="list-style-type: none"> • IVASS (IT) • DNB (NL) • Finanstilsynet (NO) • ACPR (FR)
<p>ONGOING SUPERVISION OF OUTSOURCING</p> <p>Off-site supervision</p>	
<p>Some NSAs are recommended to develop and make use of internal procedures supporting off-site supervision of outsourcing.</p> <p>Off-site supervision, consisting mostly on desk reviews of documentation and reports produced by the undertakings (<i>e.g.</i> RSR, ORSA, other specific reporting), their auditors and/or service providers can be used by the supervisors to: (i) identify risks, trends of outsourcing; (ii) review documentation associated to the ongoing outsourcing arrangements of the undertakings; and (iii) produce evidence for the need to launch tailored on-site inspections at the undertaking or the service provider premises or thematic market analysis.</p>	<ul style="list-style-type: none"> • NBB (BE) • ICCS (CY) • BaFin (DE) • EFSA (EE) • BoG (EL) • DGSFP (ES) • FIN-FSA (FI) • HANFA (HR) • MNB (HU) • FMA (LI) • Finanstilsynet (NO) • KNF (PL) • ASF (RO) • NBS (SK)
<p>ONGOING SUPERVISION OF OUTSOURCING</p> <p>On-site supervision</p>	
<p>Some NSAs are recommended to develop and make use of internal procedures supporting on-site supervision of outsourcing.</p> <p>On-site activities at the undertaking's and/or service provider's premises, have been proven to be the most effective tool to verify the overall governance structure around outsourcing and whether the undertaking can ensure compliance with Solvency II of the outsourced activities. Developing and using internal procedures in this context would allow a consistent approach across different cases by ideally: (i) determining when and where (insurance undertaking or service provider) on-site activities should take place; (ii) identifying the list of information to be required from undertakings before such exercise; and (iii) listing the areas to be assessed during the on-site inspection.</p>	<ul style="list-style-type: none"> • ICCS (CY) • FIN-FSA (FI) • ACPR (FR) • ASF (PT) • ASF (RO)

<p>ONGOING SUPERVISION OF OUTSOURCING</p> <p>Supervision of intra-group outsourcing (solo perspective)</p>	
<p>As part of its ongoing supervisory practices, some NSAs are recommended to ascertain the extent of control held by the undertaking on its intra-group service providers and ability to influence their action. The NSAs are recommended to review the independence of the undertaking’s AMSB in monitoring the outsourcing of CIF to intra-group service providers with the objective to verify whether the compliance with the requirements set out in Article 274 of the DR is ensured on ongoing basis..</p>	<ul style="list-style-type: none"> • ICCS (CY) • FIN-FSA (FI) • FCMC (LV) • ASF (PT) • ASF (RO)
<p>ONGOING SUPERVISION OF OUTSOURCING</p> <p>Supervision of outsourcing of delegated authority to underwrite and settle claims</p>	
<p>In the context of ongoing supervision of outsourcing of delegated authority to underwrite and settle claims, a critical aspect to assess is the conflict of interest between the outsourcing undertaking and the service provider. Although having in place a robust system of supervision of this type of outsourcing, MFSA has been recommended to further strengthen the type of controls it performs in relation to the above.</p>	<ul style="list-style-type: none"> • MFSA (MT)

Best practices

According to the peer review methodology, the ad hoc peer review committee on outsourcing has also identified best practices of NSAs, whose adoption might be of benefit for other competent authorities. The practices are reflected in the report. The table below provides an overview of the area of the outsourcing supervisory lifecycle to which the specific best practice apply.

Area of best practice	NSA(s) applying the best practice
<p>OUTSOURCING FRAMEWORK</p>	
<p>Communication of the outsourcing framework to the market</p>	
<p>The ad hoc peer review committee considered a best practice the use of a broad range of documentation to express NSA expectations for the undertakings, for example in regards to their obligations from the regulatory perspective of outsourcing. Such expectations may be transmitted by the NSAs through Q&A, guidance, policy notes, speeches, press releases, conferences, publications, etc.</p>	<ul style="list-style-type: none"> • CBI (IE)
<p>OUTSOURCING FRAMEWORK – DEFINITION AND RULES ON CERTAIN TYPE OF OUTSOURCING</p>	
<p>Criteria to identify critical or important functions or activities (CIF)</p>	
<p>The ad hoc peer review committee considered a best practice when NSAs further complements the non-exhaustive list, set out in Paragraph 2.291 of the Final Report on Public Consultation No. 14/017 on Guidelines on System of Governance, of what could be considered a CIF. In addition, in the interest of clarity, there can also be an advantage in providing criteria that highlight what does not constitute a CIF.</p>	<ul style="list-style-type: none"> • ACPR (FR)
<p>NOTIFICATION PROCESS</p>	
<p>Structure of the notification</p>	
<p>The ad hoc peer review committee considered a best practice when NSAs have in place a structured approach for the provision of information requested from the undertaking at the notification of a new outsourced activity or of a material change</p>	<ul style="list-style-type: none"> • NBB (BE) • DGSFP (ES) • ACPR (FR) • MFSA (MT)

regarding a previously notified outsourced activity and, in addition, have implemented a step by step approach as regards the detailed assessment of such information. The digitalisation of this process, is also considered as a best practice, as it increases comparability across notifications, transparency of the process and has the potential to be resource efficient.

A supervisory approach which does not rely only on the information provided by the undertaking and favours direct engagement of the NSA with the service provider is also considered as a best practice as it may provide more robust conclusions as regards the compliance of outsourcing with regulatory requirements and ascertain the accuracy of the risk assessment and due diligence conducted by the undertaking.

ONGOING SUPERVISION OF OUTSOURCING

The ad hoc peer review committee considered a best practice when NSAs perform horizontal thematic reviews in order to assess compliance of the outsourcing activities with the requirements of the legislation across the insurance sector.

The launch of a thematic review and the selection of a topic shall be risk-based, and emerge from the risk-assessment exercise carried out by the NSA. Given that a thematic review is extensive and resource intensive, its scope should be clearly defined and the launch of such exercise should be considered as part of a prioritisation exercise by the NSA.

A thematic review can serve as a diagnostic tool or it can also be used to carry out a deep-dive investigation in already identified risks and issues in order to better fine-tune policy or supervisory measures to address such risks and issues. Such thematic reviews may also be useful in order to identify trends in outsourcing by undertakings and to update the NSAs' database on outsourcing.

- FIN-FSA (FI)
- KNF (PL)

Actions to be taken by EIOPA

EIOPA has identified areas of the outsourcing framework and outsourcing supervisory practices where the possibility to achieve higher supervisory convergence and/or more clarity of supervisory

expectations should be further assessed. To address those areas, **EIOPA would consider further analysis in the following three domains:**

- 1) **outsourcing of delegated authority**, i.e. the practice to grant, to an insurance intermediary, who is not an employee of the undertaking, authority to underwrite business or settle claims in the name and on account of an undertaking;
- 2) **definition of material development** and the **meaning of timely notification** according to article 49(3) of Solvency II Directive;
- 3) **supervision of undertakings** making such an extensive use of outsourcing to impact their **corporate substance** as embedded in Article 41 of the Solvency II Directive (“empty shells”)

In relation to the first domain, EIOPA will consider developing further guidance to NSAs on how to differentiate between the activity of (re)insurance distribution and the outsourcing by an undertaking, with delegated powers to the service provider, of the activities of underwriting and/or settling claims. Furthermore, EIOPA will assess the need to further develop the concept of Managing General Agent (MGA), in order to ensure convergence in the regulation and supervision of this type of entities.

Regarding the second domain, EIOPA will consider developing further guidance to NSAs on what should be considered material development of critical and/or important functions and activities and the meaning of timely notification.

Lastly, in relation to the third domain, EIOPA will consider developing guidance to assist NSAs to assess the existence of corporate substance of undertakings and allow identification of empty shells.

Conclusions

The peer review on outsourcing covered the application and supervision by NSAs of the relevant regulatory provisions and guidelines related to outsourcing from 1 January 2016 to 31 December 2020.

This peer review assessed the overall maturity of the framework implemented by the NSAs to supervise outsourcing by insurance and reinsurance undertakings with the objective to identify gaps, areas of improvement as well as best practices.

The supervisory community is well aware of the importance of the outsourcing phenomenon in the overall picture of the activities performed by undertakings including its impacts on the supervisory activities. Overall, the different NSAs have implemented structured supervisory frameworks enabling them to supervise the outsourcing practices by their supervised entities.

However, taking into account the market trends and the different level of maturity of the various outsourcing supervisory frameworks implemented, the peer review highlighted several aspects with a relevant impact to the supervisory convergence on outsourcing at EEA level:

- Several NSAs improved their outsourcing supervisory framework shortly before or after the reference period of the peer review;
- other NSAs made public statements on outsourcing to underline the importance of its proper management by undertakings;
- several NSAs improved (or announced improvements to) their internal information management system in relation to outsourcing;
- some authorities reported either an expectation or an observation of an increasing trend of notifications received by undertakings; and
- some NSAs, still have material improvements to implement to reinforce their supervisory framework and practices on outsourcing.

In a nutshell, the peer review identified areas of the outsourcing framework and outsourcing supervisory practices that should be improved. These areas relate to:

1. The supervision of undertakings extensively using outsourcing and the impact of such outsourcing in their corporate substance, as embedded in Article 41 of the Solvency II Directive (“empty shells”);
2. The general approach by NSAs to supervision of outsourcing (off-site supervision and on-site supervision);
3. The supervision of outsourcing of delegated authority to underwrite and settle claims;
4. The supervision of the activities performed by the branches of EEA undertakings, particularly in case of complex business models, such as when the branch performing the activity is a third country branch in relation to the latter business model, it is noted that EIOPA is currently assessing it;
5. The supervision of shared services providers in case of intra-group outsourcing and provision of personnel as form of outsourcing;
6. Approaches to the notification process and the set of minimum information to be notified in a structured manner to the NSAs by undertakings according to Article 49(3) of the Solvency II Directive;
7. The definition of material developments to be notified to the NSAs by undertakings according to Article 49(3) of the Solvency II Directive;
8. The meaning of timely notification in the context of the notifications prior to outsource and in case of material developments to be performed by undertakings according to Article 49(3) of the solvency II Directive.

In some cases, recommended actions to NSAs were issued, in other cases an action by EIOPA will be considered in order to achieve higher supervisory convergence and/or more clarity of supervisory expectations.

As regards recommended actions to NSAs, those addressing specifically supervisory practices concerning outsourcing, account for the majority of Recommended Action, while actions by EIOPA will help to mostly develop supervisory convergence aspects which are relevant for the objective of achieving convergence of EEA NSA's supervisory practices on outsourcing. Finally, best practices by NSAs were also identified as possible models for improvement of current established supervisory practices or supervisory tools on outsourcing across EEA.

The implementation of the proposed recommended actions set forth in this report will be monitored and subject to a follow up by the PRC no later than two years after the publication of this report. This will not preclude any previous monitoring on said implementation by EIOPA, in line with Article 32 of EIOPA Decision on Peer Reviews.

Next steps

As follow-up of this peer review, NSAs' compliance with the recommended actions will be monitored and assessed as foreseen in EIOPA's peer review methodology.

EIOPA will consider how to best reflect the overall results (findings, best practices, recommended actions and observations) of this peer review in its work on supervisory convergence.

In addition, EIOPA will also take into account the results of this peer review in the implementation of the Digital Operational Resilience Act (DORA)⁶, when applicable.

⁶ DORA will deepen the digital risk management dimension of the European Single Rulebook, including new requirements on the management of the ICT third party risk faced by financial entities. Among these requirements, DORA requires financial entities to keep a register of ICT third party arrangements and to share it with the supervisory authorities on a yearly basis.

1. BACKGROUND, SCOPE, METHODOLOGY AND APPROACH

1.1. BACKGROUND

Given the increasing relevance of outsourcing in insurance, conducting a thorough analysis of the national supervisory authorities' (NSAs) approaches to the supervision of the Solvency II framework⁷, exchanging information and identifying any gaps were considered beneficial to further strengthen consistency and effectiveness in supervisory outcomes *vis a vis* outsourcing.

1.2. SCOPE

The aim of the peer review on outsourcing was to assess the NSA's application of the relevant provisions of the Solvency II framework related to outsourcing; to exchange experience and information about the scope of outsourcing supervision; and to identify best practices among NSAs.

The following specific topics are excluded from the scope of this peer review on outsourcing:

- a. the ongoing supervision of outsourcing of key functions, which was already partially covered by the follow-up of the peer review on key functions;⁸ and
- b. the ongoing supervision of ICT outsourcing, which will likely be subject to relevant changes as the EIOPA Guidelines on information and communication technology security and governance (EIOPA-BoS-20-600) and EIOPA Guidelines on outsourcing to cloud service providers (EIOPA-BoS-20-002)⁹ both entered into force after the peer review reference period.

⁷ Including Articles 38 and 49 of Solvency II Directive, Article 274 of the Solvency II Delegated Regulation and Section 11 of EIOPA Guidelines on System of Governance (EIOPA-BoS-14/253).

⁸ The follow-up on the peer review on key functions covered specifically the assessments of the persons in the undertaking responsible for outsourced key functions and any distinctions in supervisory assessments between intra- and extra-group outsourcing of key functions.

⁹ Furthermore, ICT outsourcing will most likely be impacted by the Digital Operational Resilience Act if we consider the [Text of the proposal for a regulation on digital operational resilience for the financial sector published by the European Commission as part of the Digital Finance Strategy on 24 September 2020](#). (Consulted on 25.05.2021).

1.2.1. COUNTRIES ASSESSED

All countries represented at EIOPA were assessed in this peer review. Annex 1 - Countries and competent authorities participating in this peer review and their abbreviations of this report contains a list of the NSAs participating in this peer review.

1.2.2. REFERENCE PERIOD

On the basis of the Methodology for conducting peer reviews¹⁰ (PR methodology), the reference period for this peer review was set from 1 January 2016 until 31 December 2020.

1.3. METHODOLOGY AND APPROACH

The peer review started in 2021 under the rules laid down in Article 30 of EIOPA Regulation. The ad hoc Peer Review Committee (PRC) was led by EIOPA and included representatives from EIOPA and the NSAs of Belgium (NBB), Bulgaria (FSC), Czech Republic (CNB), France (ACPR), Germany (BaFin), Malta (MFSA), Romania (ASF) and Slovakia (NBS).

One of the main sources of information were the answers provided by NSAs to a self-assessment questionnaire. The PRC drafted the questionnaire using an exemplificative reference model on the basis of the “supervisory lifecycle of outsourcing”. This reference model contained the main areas of supervision of outsourcing identified on the basis of the regulatory requirements, supervisory guidance and expert judgment.

Taking into account the preliminary findings following the assessment of the responses to the self-assessment questionnaire and any additional information, for example, following additional questions aiming at clarifying the answers provided to the questionnaire, the PRC established priorities for the fieldwork.

Three different levels of engagement with NSAs during the fieldwork (please see Table 1) were selected based on the following criteria:

- a) extent of the experience in a particular area with a view to exploring any potential best

¹⁰ Decision of the European Insurance and Occupational Pensions Authority adopting the methodology for the conduction of peer reviews (EIOPA-BoS-18-354 – 28 September 2018) which was in the meanwhile repealed by Decision of the European Insurance and Occupation Pension Authority on peer reviews (EIOPA-BoS-22-030). Until the entry into force of this EIOPA Decision, the peer review also followed the governance rules set out in Regulation (EU) No 1094/2010 of the European Parliament and of the Council on 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 (EIOPA Regulation)

- practice;
- b) potential extent of the misapplication of any measures set out in the EU regulatory framework;
- c) the relative significance of the NSA as regards the topic under review, which can be assessed, among other criteria, through relevant market size and level of activity;
- d) relevance of the issue subject to peer review at national level and from a cross-border perspective, affecting more than one EEA jurisdiction;
- e) non-contribution, insufficiency of responses to the self-assessment questionnaire or information requested; and
- f) inconsistency or lack of clarity of responses provided in the self-assessment questionnaire.

This fieldwork activities allowed the PRC to confirm their understanding of the answers provided and to discuss any potential issues identified, but also to exchange supervisory experiences and to further understand supervisory practices by NSAs to facilitate the identification of best practices.

TABLE 1: COMMUNICATION MEANS DURING FIELDWORK

Communication means	Number of NSAs	NSAs
Written procedure	[7]	EE; HR; IS; LT; LV; SI; SK
Conference call	[17]	AT; BG; CY; CZ; DK; EL; ES; FI; HU; IT; LI; NL; NO; PL; PT; RO; SE
Virtual Visit	[6]	BE; DE; FR; IE; LU; MT

Following the completion of the fieldwork, an analysis of the material and evidence was undertaken and the key findings and proposed recommended actions were reported to each NSA.

1.3.1. ASSESSMENT CRITERIA AND SUPERVISORY EXPECTATIONS

In a peer review, according to the PR methodology, the assessment criteria are set to provide for a common understanding of expected supervisory approaches and outcomes.

The PRC identified and used the assessment criteria and supervisory expectations to draft the recommended actions addressed to the NSAs and EIOPA, to identify the best practices and to present the findings of the assessment. The structure of this report builds on them.

The assessment criteria and its expectations on the supervisory practices on outsourcing have been developed on the basis of:

- ▶ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);
- ▶ 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);
- ▶ EIOPA Guidelines on System of Governance (EIOPA-BoS-14/253) and the related explanatory text included in the Final Report on Public Consultation No. 14/017 on Guidelines on System of Governance;
- ▶ The five principles and key characteristics of high-quality and effective supervision.¹¹

Furthermore, the assessment criteria and the supervisory expectations are inspired¹² by:

- ▶ Guideline 16 of the EIOPA Guidelines on outsourcing to cloud service providers on “Supervision of cloud outsourcing arrangements by Supervisory Authorities”
- ▶ the IAIS Insurance Core Principles on Outsourcing;
- ▶ EIOPA Opinion on supervisory convergence in light of the United Kingdom withdrawing from the European Union.

Table 2 displays the assessment criteria and the supervisory expectations defined and considered during this peer review, taking the structure of the outsourcing supervisory lifecycle described above as reference model.

¹¹ A high-quality and effective supervision should be (i) risk-based and proportionate; (ii) forward-looking, preventive and proactive; (iii) challenging, skeptical and engaged; (iv) comprehensive; and (v) conclusive (in, EIOPA, 2017. “A Common Supervisory Culture – Key characteristics of high-quality and effective supervision”, doi:10.2854/671745, available at [Common supervisory culture | EIOPA \(europa.eu\)](https://www.eiopa.europa.eu/common-supervisory-culture) [consulted in 27.05.2021].

¹² These documents are not directly applicable to the peer review scope. However, both the principles and the operational implications correlated are considered as useful references to establish the evaluation criteria.

TABLE 2: SUPERVISORY LIFECYCLE, ASSESSMENT CRITERIA AND SUPERVISORY EXPECTATIONS

<u>OUTSOURCING FRAMEWORK</u>
<p>In relation to the outsourcing framework, the following aspects were considered:</p> <ul style="list-style-type: none"> • how Solvency II Directive was transposed and how the relevant provisions set out in Commission Delegated Regulation (EU) 2015/35 (DR) were implemented in supervisory practice; • whether the EIOPA Guidelines on System of Governance, in particular those relevant for outsourcing, were complied with by the NSAs; • the presence of regulations from NSAs or soft tools to provide guidance to the market (<i>e.g.</i> such as circulars, official publications, etc.) and to “share” supervisory expectations (<i>e.g.</i> presentations, white papers, letters to the market, etc.) on outsourcing; • and how all the above contribute to the concrete processes and procedures in place to supervise outsourcing undertaken by the NSA.
<u>OUTSOURCING FRAMEWORK – DEFINITIONS AND RULES ON CERTAIN TYPE OF OUTSOURCING</u>
<ul style="list-style-type: none"> • <u>Definition and scope of outsourcing.</u> The NSA applies a definition of outsourcing in line to the one set in Article 13(28) Directive and, in case of limitations to outsourcing scope, those are proportionate to the underlying risks in line with Article 49(2) Directive. • <u>Criteria to classify critical or important functions or activities (CIF).</u> The NSA has defined and shared with the market criteria to classify CIF, taking into account Guideline 60 of EIOPA Guidelines on System of Governance, the explanatory text included in the EIOPA Final Report on Public Consultation No.14.017 on EIOPA Guidelines on System of Governance, and the market specificities. • <u>Boundaries between outsourcing of delegated authority to underwrite and settle claims and (re)insurance distribution.</u> Considering Guideline 61 of EIOPA Guidelines on System of Governance, the explanatory text included in the EIOPA Final Report on Public Consultation No.14.017 on EIOPA Guidelines on System of Governance, and the market specificities, the NSA has defined and shared with the market and within the NSA a clear approach to distinguish between intermediation and outsourcing of delegated authority to underwrite and settle claims and when its outsourcing is to be considered the outsourcing of a CIF. • <u>‘Empty shells’ undertaking.</u> Having a minimum level of corporate substance is a principle embedded in Article 41 of the Solvency II Directive, and it should be always observed by undertakings and supervised by the NSA. • <u>Material developments.</u> The NSA has defined and shared with the market a definition of material development regarding an outsourced critical or important function in line with Article 49(3) of the Solvency II Directive and taking into account Guideline 64 of EIOPA Guidelines on System of Governance, the explanatory text included in the EIOPA Final Report on Public Consultation No.14.017 on EIOPA Guidelines on System of Governance.

- Intra-group outsourcing (including the use of shared services, sharing of staff). According to Solvency II, intra-group outsourcing does not differ from outsourcing to third party service providers. However, some degree of flexibility is recognised through the application of the principle of proportionality in the process of due diligence of the service provider.
- Outsourcing to third-country service providers. Where applicable, the NSA has defined a supervisory approach to make sure the risks posed by third party service providers are properly overseen and taken into account by the undertakings.
- Services provided to/by branches. Where applicable, the NSA has developed a clear view on how services provided by/to branches should be notified and supervised (i.e. when an undertaking distribute its activities and functions between its branch(es) and its head office).

NOTIFICATION PROCESS

The NSA has defined and shared with the market a notification process in case of “new outsourcing” and “material developments of existing outsourcing”. As part of the definition of the process above, the NSA has defined and communicated to the market:

- a timeline to be observed by undertakings while performing the above notifications. The minimum requirement is that the notification is submitted before the outsourcing come into effect and allows for sufficient time for the NSA to examine the proposed outsourcing. According to the EIOPA Final Report on Public Consultation No.14.017 on EIOPA Guidelines on System of Governance (§2.312) it should be at least six weeks before the outsourcing is due to come into effect.
- a set of minimum information to be notified to the NSA in a structured manner (*e.g.* through the use of a template) to enable a supervisory assessment;
- the NSA retains as a pre-emptive power at notification, the right to object the entering into force of an outsourcing agreement, in case the NSA concerned has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place, that cannot be mitigated otherwise

SUPERVISION OF OUTSOURCING AT NOTIFICATION

The NSA has developed and makes use of internal procedures supporting the supervisory scrutiny of the notification.

Supervision at notifications means to review the notification with the objective to verify whether undertakings comply with the regulatory requirements set by Solvency II Directive and Delegated Regulation and to adopt a pro-active approach by sharing concerns and/or requiring the undertakings to implement changes to their outsourcing arrangements and/or to their organisational and governance structures to manage the outsourcing before the outsourcing arrangement (or the actions undertaken following a material development) becomes fully operational.

Furthermore, in case the NSA receives a new application for authorisation of new undertakings, the NSA reviews and challenges outsourcing arrangements as part of application review. Such review and challenge includes the review outsourcing arrangements relating to branches, when applicable.

DOCUMENTATION REQUIREMENTS FOR UNDERTAKINGS

In order to facilitate undertakings compliance to the requirements of Guideline 60 of EIOPA Guidelines on System of Governance (i.e. that undertakings need to document the CIF assessment and the results of the risk assessment on the outsourced function or activity and the due diligence on the service provider), the NSA has shared with the market its supervisory expectations. These supervisory expectations, to ensure that undertakings have a continuous overview and control over their outsourcing arrangements enabling also concentration risk assessment and supervision, may contain (as a “nice to have”) the requirement to develop and maintain a register of outsourced functions and activities.

DOCUMENTATION AND INFORMATION MANAGEMENT

The NSA has implemented a comprehensive, accessible and structured set of information, typically in the form of a register, regarding outsourced functions and service providers both at undertaking and market level.

Such structured set of information should enable the NSA to adequately identify potential risks, namely concentration risks, and prioritise supervision of outsourcing of key functions or other CIF to the same service providers.

ON GOING-SUPERVISION OF OUTSOURCING

Off-site supervision

The NSA has developed and makes use of internal procedures supporting supervision of outsourcing off-site. Off-site supervision, consisting mostly on desk reviews of documentation and reports produced by the undertakings (e.g. RSR, ORSA, other specific reporting), their auditors and/or service providers, can be used by the supervisors to: (i) identify risks, trends of outsourcing; (ii) review documentation associated to the ongoing outsourcing arrangements of the undertakings; and (iii) produce evidence for the need to launch tailored on-site inspections at the undertaking or the service provider premises or thematic market analysis.

On-site supervision

The NSA has developed and makes use of internal procedures supporting supervision of outsourcing on-site.

On-site activities at the undertaking’s and/or service provider’s premises, has been proven being the most effective tool to verify the overall governance structure around outsourcing and that the outsourcing is kept under control by undertakings. Developing and use internal procedures in this context would allow a consistent approach across different cases by ideally: (i) determining when and where (insurance undertaking or service provider) on-site activities should take place; (ii) identifying the list of information to be required from undertakings before such exercise; and (iii) listing the areas to be assessed during the on-site inspection.

Supervision of intra-group outsourcing (solo perspective)

As part of its ongoing supervisory practices, the NSA is able to ascertain the extent of control held by the undertaking on its intra-group service providers and ability to influence their action. The NSA reviews the independence of the undertaking’s AMSB in monitoring the outsourcing of CIF to intra-group service providers with the objective to verify whether the compliance with the requirements set out in Article 274 of the DR is always ensured.

Supervision of intra-group outsourcing (group perspective)

The NSA, as group supervisor and where applicable (i.e. when intra-group shared service providers are used within the group), monitors (following a risk-based approach) the intra-group service providers from a holistic perspective to avoid any occasion where they might become a single point of failure for the group itself taking into account the materiality of the operational risk that they pose to the group.

Supervision of outsourcing of delegated authority to underwrite and settle claims

The NSA supervising a (re)insurance undertaking outsourcing delegated authority to underwrite and settle claims on its behalf to a service provider has developed a comprehensive supervisory approach which includes the performance of specific controls on the sustainability of the undertaking business model and on the reliability of the service provider and set up a monitoring system of the business model of the undertaking making use of this type of outsourcing.

In case the outsourcing involves a service provider located in a different member state than the outsourcing undertaking, the NSA collaborates with the NSA supervising the service provider and/or where the risks and commitments are underwritten.

2. RESULTS OF THE ASSESSMENT

This chapter contains a description of the results of the assessment presented following the structure of the assessment criteria and supervisory expectations illustrated in the previous chapter.

2.1. OUTSOURCING FRAMEWORK

In order to assess the level of maturity of the supervisory frameworks relating to outsourcing from the perspective of the market participants, the peer review performed an overall mapping of:

- ▶ the national legal acts, including those issued by the Supervisory Authority, to implement the outsourcing requirements stipulated in the Solvency II Directive, Delegated Regulations and EIOPA guidelines (Annex 1, section 1); and
- ▶ the supervisory expectations (if any) issued by the Supervisory Authority to the Market (*e.g.* circulars, letters, opinions, recommendations) and a description of the follow-up done (Annex 1, section 2).

In addition to the above, the peer review assessed the following areas to understand in which way the European requirements have been implemented and communicated to the market by each NSA:

- ▶ Definition of outsourcing including when the legislative framework defines functions/activities which cannot be outsourced, or restrictions on the number of functions to be outsourced;
- ▶ Definition and criteria to be used by undertakings to classify critical or important operational functions or activities (CIF);
- ▶ Rules on specific cases of outsourcing, namely: (1) intragroup outsourcing of CIF; (2) outsourcing of CIF to service providers established in third countries (3) CIF provided to/by branches of the insurance undertaking.

Furthermore, to assess the completeness, maturity and robustness of the supervisory framework relating to outsourcing from the perspective of the NSA, the peer review assessed the presence and the completeness of internal procedures to guide the supervisory activities.

2.1.1. MATURITY OF THE FRAMEWORK

2.1.1.1. Overview of the use of outsourcing in the EEA

The importance of the use of outsourcing by European undertakings is growing, mainly driven by ICT and technology-related outsourcing. However, the level of outsourcing used by undertakings in the EEA is different, with certain Member States having significantly higher number of outsourced functions per undertaking than others. These differences also help explaining the different levels of maturity of the frameworks implemented in the Member States to supervise outsourcing, the diverging supervisory practices and the challenges faced by the different NSAs.

In terms of quantitative information, the peer review performed an assessment on the number of notifications per CIF received by the supervisory authorities and on the number of CIF outsourced by undertakings which are described in this paragraph.

Five NSAs were not able to produce evidence of the number of new notifications of CIF during the reference period: EE, FI, IE, NO and SE. DGSFP (ES) was not able to produce the split of CIF as requested and BaFin (DE) reported mostly data relating to key functions. This evidence does not however necessarily mean that those NSAs do not have a holistic picture of the use of outsourcing by undertakings in their market. In the paragraph dedicated to NSAs' information management further considerations on data quality and data completeness are drawn.

To all the charts presented in this section, the following disclaimer applies: it is important to take into account that the number of CIF outsourced is calculated on the basis of the grouping provided by each NSA, which do not necessarily apply the same definition. For the same function there might be different grouping approaches (which can be explained, for example, by the different notification approaches followed by the NSAs) which may give a non-comparable result of CIF .

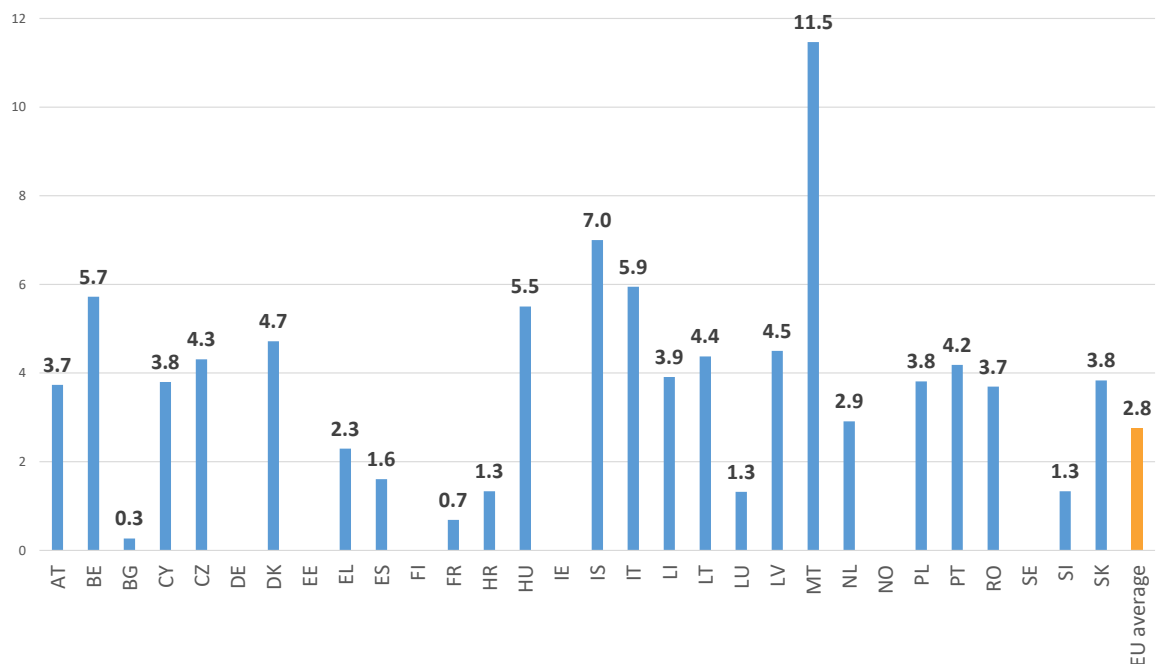
Chart 1 represents the ratio of CIF (including the Solvency II key functions) outsourced by undertakings operating in the Member States at the end of 2020¹³. This ratio should be read as an indication of the materiality of the use of outsourcing by undertakings operating in a given market, and cannot entirely be used to compare jurisdictions.

Furthermore, while reading chart 1 it is to be taken into account that the ratio of CIF outsourced by undertaking is heavily influenced by the characteristics of the market. For example, in case of smaller insurance markets (in terms of number of insurers) with a material presence of subsidiaries to international insurance groups and/or with undertakings making intensive use of outsourcing due to specific business models (e.g. by using extensively MGAs), may result in having this ratio

¹³ The number of undertaking per Member State in this report has been retrieved from the insurance statistics available on the EIOPA website at [this link](#).

higher to markets with higher number of undertakings and/or with limited presence of undertakings making use of outsourcing.

CHART 1 – RATIO OF CRITICAL FUNCTIONS OUTSOURCED TO NUMBER OF UNDERTAKINGS



MT¹⁴ is the jurisdiction with the highest number of CIF outsourced per undertaking (11.5) while BG is the one with the lowest number (0.3). The EU average is 2.8 CIF outsourced per undertaking.

In terms of absolute numbers of CIF outsourced per undertaking, excluding the NSAs not displayed in the table above, in the EEA there are more than 4.600 CIF outsourced. Including the data reported by BaFin (DE), which are mostly related to KF, this number jumps to more than 5.600. Excluding DE, the jurisdictions with the highest number of CIF outsourced are MT (more than 700), IT (more than 550), DK, LU, NL and BE (around 350). The ones with less are BG (8 CIF outsourced), HR and SI (20).

¹⁴ It is to be noted that around 75% of these arrangements relate to a limited number of undertakings outsourcing their delegated authority to underwrite and settle claims to intermediaries acting as Managing General Agents (MGAs)

Looking at the type of functions and activities outsourced, cumulatively the key functions are the most frequently outsourced activities in 15 member states out of 24, making it the most frequent type of outsourcing. In relation to the operational functions, IT (including data storage, system maintenance or support), claims management (which includes delegated authority to MGAs and other service providers) and investment management are the CIF mostly outsourced in the EEA. The ORSA process, product design and pricing, accounting and finance and underwriting are the CIF less outsourced by EEA undertakings. Among the key functions, the internal audit and the actuarial function are the most outsourced.

The Charts below show the distribution of the CIF outsourced per member state and the detail per key function outsourced.

CHART 2 – DISTRIBUTION OF OPERATIONAL FUNCTIONS OUTSOURCED PER EEA MEMBER STATE

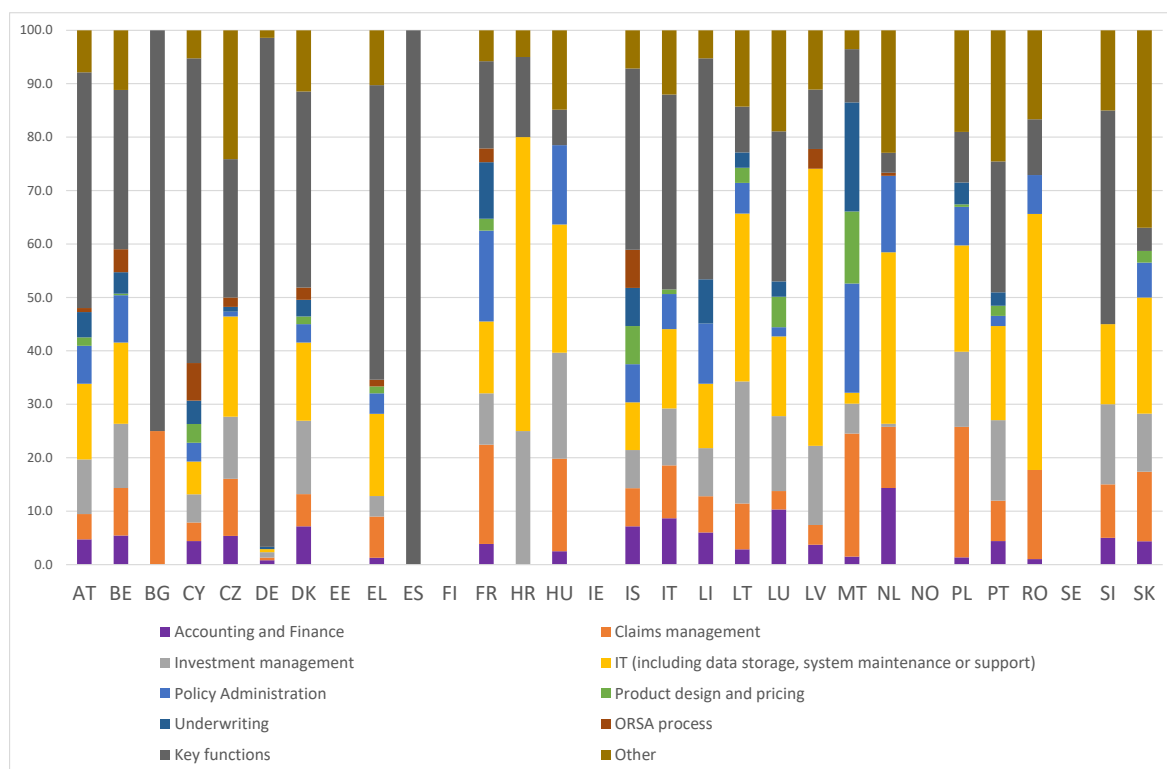
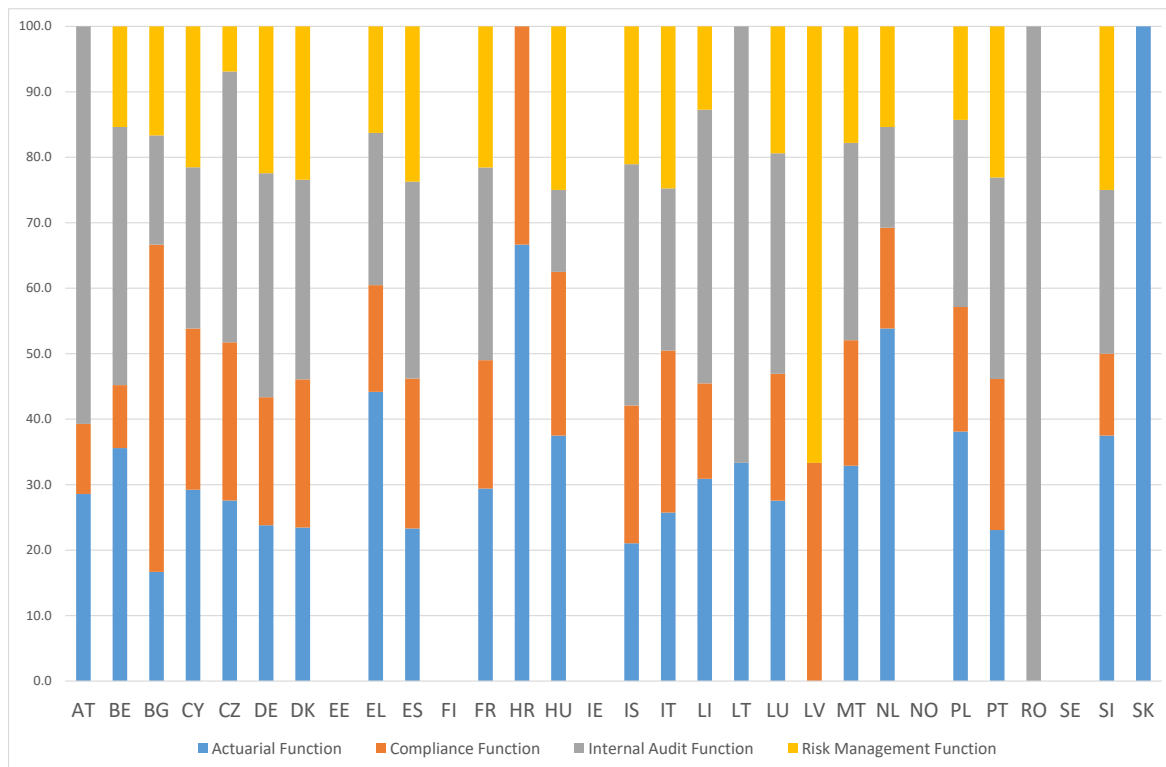


CHART 3 – DISTRIBUTION OF KEY FUNCTIONS OUTSOURCED PER EEA MEMBER STATE



The PRC requested the NSAs to produce evidence of the number of notifications received from their supervised undertakings split by CIF and by time of notification (*i.e.* prior to outsource and in case of material developments).

Similarly to the stock view above (Chart 1), MT is the jurisdiction where most CIF notifications per undertaking were performed both in 2019 and 2020¹⁵ and BG, ES and HR are among the jurisdictions where fewer new CIF outsourcing were notified to the NSA.

The EU trend of CIF notification prior to outsource between 2019 and 2020 is stable:

- 13 jurisdictions have an increasing trend (*i.e.* notifications to number of undertakings increase year on year): for almost all of them the trend is slightly increasing. The outlier is PL with a material increase of the notifications prior to outsource processed in 2020 compared to 2019;

¹⁵ As mentioned above, 75% of these arrangements relate to a limited number of undertakings outsourcing their delegated authority to underwrite and settle claims to intermediaries acting as MGAs

- 12 jurisdictions have a decreasing trend: for almost all of them the trend is slightly decreasing. The outlier is EL with a material reduction of the notifications prior to outsource processed in 2020 compared to 2019.

In terms of absolute numbers, MT (258 CIF (unbundled) notifications prior to outsource in 2020), DE (209) and IT (202) received the highest number of notifications, whilst BG (2), HR (4) and LV (4) NSAs received the least number of notifications.

The picture for CIF notifications in case of material developments is very different from the one drawn for CIF notifications prior to outsource.

- The use of notifications in case of material developments is less material in almost all jurisdictions. One of the possible reasons relates to the lack of clarity of what should be considered material development of critical and/or important functions as described in paragraph 2.1.6.
- Seven NSAs (BG, CY, DE, ES, FR, IS, RO) did not receive any notifications in 2020 and ten (the same seven *plus* LT, LU, and PT) in 2019. MNB (HU) was not able to produce information in relation to notifications received in case of material developments.
- In terms of materiality, only few NSAs received a stable number of notifications in the two years of observation: AT (24 in 2019 and 14 in 2020), BE (9 and 12) and IT (19 and 17). HR (7 and 14), MT (46 and 94)¹⁶ and PL (7 and 62) had the most material increase.

In relation to the market developments, the PRC assessed whether the COVID-19 pandemic impacted: (i) the number and the type of functions/activities notified by undertakings to their NSAs (*e.g.* acceleration of digitalisation trend, increase/decrease of number of notifications) and (ii) the approach/process to review the notifications received by NSAs. Nearly all NSAs identified some material changes on the outsourcing practices with root cause relating to the COVID-19 pandemic, mostly related to increase of ICT outsourcing.

¹⁶ Also here, this mostly relates to MGAs.

2.1.1.2. Considerations on the maturity of the framework from the perspective of the market participants

Considering the different level of the use of outsourcing by undertakings, the different level of maturity of the various outsourcing frameworks should not come as a surprise.

From a policy perspective, all jurisdictions have implemented the Solvency II Directive and apply the requirements of DR relating to outsourcing. However, in relation to the implementation of the EIOPA Guidelines on System of Governance, it is possible to distinguish between the following three cases:

1. implementation of the guidelines into specific guidance issued by the NSA tailored to the market. There are different levels of guidance: from presentation at events to binding regulations issued by the NSA;
2. direct reference to the guidelines published on the EIOPA website without providing additional guidance to the market participants on their implementation. Certain NSAs provide guidance on specific topics (*e.g.* ICT or KF outsourcing);
3. partial/no implementation of the guidelines.

TABLE 3 – MATURITY OF THE FRAMEWORK

	Nr.	NSAs
Case 1	15	AT, BE, CY, DE, EL, ES, FR, HU, IE, IT, LI, MT, NL, NO, PL, SK
Case 2	13	CZ, DK, EE, FI, IS, LT, LU, LV, PT, RO, SE, SI
Case 3	2	BG, HR (partially)

Another important tool used by NSAs in the field of outsourcing is thematic reviews. In the reference period, several of them used it both for supervisory and policy purposes. Some NSAs (*e.g.* BE, CY, FI, IE, LU, NL, PL) performed thematic reviews focused only on outsourcing, while others performed either tailored thematic reviews (*e.g.* outsourcing of a specific function) or broader reviews of the entire system of governance chapter of Solvency II. Regarding the use of dedicated thematic reviews, FIN-FSA (FI) and KNL (PL) were considered to have best practices (see [Annex 3 – Best practices identified during the reference period](#)).

Looking closer to the NSAs receiving a recommended action on this area:

- CAA (LU) is currently updating their outsourcing framework following a thematic review. The one in force as of 31.12.2020, although making reference to the guidelines published on EIOPA's website through a link on CAA's website, presented an outsourcing framework requiring improvements, including both the development of clearer guidance and processes for the market participants and the strengthening of the supervisory practices.

The main triggers to the review of the framework were Brexit¹⁷ and an increased use of outsourcing in the past years by Luxembourgish non-life insurers (including to service providers established in third countries).

- FSC (BG) issued for consultation, during the reference period, a Draft Ordinance on the requirements to the system of governance of insurers and reinsurance, which was published on 22.07.2021 (after the reference period).
- ASF (PT) during the reference period was in the process of defining a Regulatory Standard on System of Governance to further incorporate EIOPA guidelines into the Portuguese framework (at the moment there is a link to the EIOPA website). Differently from LU and BG, ASF presented evidence of an internal manual in place used to supervise outsourcing, but referring mainly to the notification phase. Following the public consultation carried out in 2021, ASF published the Regulatory Standard on System of Governance in April 2022.¹⁸
- HANFA (HR) has implemented the EIOPA guidelines through a dedicated ordinance, which does not cover all the relevant explanatory text to the guidelines on outsourcing (i.e. Guidelines 14 and 60 to 64 of the EIOPA Guidelines on System of Governance). HANFA has planned to update its ordinance by June 2022. The amendment will include a reference for the undertakings to the obligation to apply the above mentioned Guidelines.

Furthermore, in relation to the communication of supervisory expectations to the market, considering the number of guidance, reports, discussion papers and studies published and continuously kept updated, the peer review identified the approach undertaken by CBI (IE) as a best practice (for further information please see [Annex 3 – Best practices identified during the reference period](#)).

Finally, although out of scope of this peer review, almost all NSAs (29 out of 30¹⁹) comply or intend to comply with the EIOPA guidelines on outsourcing to cloud service providers²⁰.

¹⁷ Luxembourg has been selected by a number of undertakings affected by Brexit as an European Hub. Given that the business model of these undertakings foresees back-office activities relying on outsourcing, it triggered the urgent need to develop capabilities by the CAA in this field.

¹⁸ Which was approved in the meanwhile ([Norma Regulamentar n.º 4/2022-R, de 26 de abril - Sistema de governação das empresas de seguros e de resseguros](#)).

¹⁹ The only NSA which formally does not comply with the EIOPA guidelines on outsourcing to cloud service providers is KNF (PL). However, the KNF has implemented a cross-sectoral framework incorporating all principles of the EIOPA cloud outsourcing guidelines.

²⁰ The EIOPA guidelines on outsourcing to cloud service providers and the related compliance tables are accessible at [this link on EIOPA website](#).

INDIVIDUAL RECOMMENDED ACTIONS AS REGARDS THE MATURITY OF THE FRAMEWORK

A recommended action to take decisive action on the development of a framework for outsourcing was issued to the NSAs which presented, during the reference period, the need to further improve their respective outsourcing framework. The NSAs of the following countries received a recommended action: **FSB-BG, HANFA-HR, CAA-LU and ASF-PT**. FSB-BG and CAA-LU have received only this comprehensive recommended action, which encompasses their overall framework. For this reason, the PRC decided not to address other recommended actions to them, when applicable.

For further details on the recommended action please see [Annex 2 – Overview recommended actions to NSAs](#).

2.1.2. DEFINITION OF OUTSOURCING

According to the definition provided by Article 13 of Solvency II, outsourcing means *an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself*. The PRC explored how this definition of outsourcing was implemented by the NSAs and, in particular:

1. whether there are specific *types* of activities, processes or services explicitly *included or excluded* from the scope of outsourcing; and
2. whether there are *limitations on the number* of functions or activities that an undertaking is allowed to outsource.

2.1.2.1. Types of activities, processes or services explicitly included or excluded from the scope of outsourcing

The PRC assessed whether NSAs published any criteria to classify an activity as outsourcing (*i.e.* content, scope, duration and frequency of use of the service provider). For example, BaFin (DE), and DFSA (DK) have provided to their market participants further guidance and criteria on how to classify an activity performed by a third party as outsourcing.

Moreover, the PRC verified whether the legislative framework provides with specific functions or activities to be considered by undertakings within the scope of outsourcing. Some NSAs referred that the national insurance law, NSA Circular or supervisory letters further specified criteria, examples or a list of functions or activities to be considered by undertakings within the scope of outsourcing. In some cases some activities were identified as not possible to be outsourced.

- BE - a Circular from NBB interpreting the Belgian Insurance Supervision Law clarifies that the scope of outsourcing relates to reliance of undertakings to third parties to exercise activities or implement procedures which: (i) are specific to the insurance undertaking and (ii) are performed on a recurring or continuous basis. This includes specifically: (i) underwriting (entering into agreements and setting claims on behalf of the undertakings) (ii) supply of staff.
- PL - Article 73 of Polish Insurance Act, in addition to transposing Solvency II definition, includes a list of insurance activities which may be outsourced by undertakings.
- FI - FIN-FSA sent a supervisory letter to the insurance undertakings referring to examples of activities which are not outsourcing (i.e. pure insurance intermediation) or which are always outsourcing (*e.g.* claims management by intermediaries). In a press release, FIN-FSA also stated that insurance undertakings cannot outsource the activity of issuing statutory insurance as it is considered of public duty.
- LV – the Latvian Insurance Act states that the following set of activities may not be outsourced: (i) the duties of the executive bodies; (ii) the issuing of guarantees or any other such obligation acts under which the insurance or reinsurance company has assumed the obligation to be liable to the creditor for the debt of a third party; (ii) all such services that are necessary for the pursuit of the insurance or reinsurance activities, for which the undertaking is licenced.
- MT - where the MFSA, following the specific requirements of the Financial Intelligence Analysis Unit (FIAU) Implementing Procedures, does not allow undertakings to outsource the role of the Money Laundering Reporting Officer, in the case of undertakings carrying out long-term business which are subject persons.
- IT – IVASS' regulation on system of governance excludes underwriting activities from the scope of outsourcing since it represents the core business of undertakings. Insurance undertaking cannot outsource to a service provider the activity to underwrite insurance risks in name and on behalf of the insurance undertaking, if it implies the performing of the activity in full autonomy.

Other NSAs provided further specifications of the requirement set by Article 49(1) of Solvency II Directive relating to the fact that insurance undertakings cannot outsource activities related to the steering and management of their activities.

2.1.2.2. Limitations on the number of functions or activities that an undertaking is allowed to outsource

In relation to the limitations on the number of functions to be outsourced, there are no specific requirements set by law or by supervisory guidance/expectations. However, it is part of several NSA supervisory practices (e.g. AT, BE, DE, FR, IE, IT, LI, LU, MT) to ensure that undertakings making extensive use of outsourcing remain able to steer and control their business and operations. For further information please refer to paragraph 2.1.5 on empty shells.

2.1.3. DEFINITION OF CRITICAL OR IMPORTANT OPERATIONAL FUNCTIONS OR ACTIVITIES

According to Guideline 60 of EIOPA Guidelines on System of Governance, *“the undertaking should determine and document whether the outsourced function or activity is a critical or important function or activity on the basis of whether this function or activity is essential to the operation of the undertaking as it would be unable to deliver its services to policyholders without the function or activity.”* Paragraph 2.291 of the Final Report on Public Consultation No. 14/017 on Guidelines on System of Governance contains a non-exhaustive list of what could be considered a critical or important function or activity.

The proper classification of CIF is paramount to ensure the correct application of the Solvency II outsourcing framework. Only in case of outsourcing of a CIF do undertakings need to notify the NSA and implement the requirements stipulated in Paragraphs 2 to 5 of Article 274 of Commission Delegated Regulation (EU) 2015/35.

In order to ensure that there is a common interpretation and understanding of the meaning of CIF by undertakings and that such notifications are due, it is critical to define a set of criteria to classify CIF starting from Guideline 60 of EIOPA Guidelines on System of Governance and taking into account the explanatory text included in the aforementioned report. It is also important to keep in mind that the criticality or importance of a function or activity might change due to, for example, the evolution of the business model of the undertaking.

Not defining such criteria might have impact on the way the outsourcing requirements are implemented and observed by undertakings, creating a risk of an unlevelled playing field and of

supervisory inconsistency among the NSAs. In the long run, this could also undermine the NSAs’ understanding of risks associated to outsourcing, creating a potentially incorrect picture of the risk profile of the undertakings and/or of the market.

Considering the above said, the PRC assessed whether the NSAs have (i) developed further criteria on how to classify an operational function or activity as CIF and/or (ii) defined a list of CIF and communicated it to (re-)insurance undertakings and other relevant stakeholders.

The classification of an outsourced function or activity as CIF is considered a relevant challenge by the PRC as regards supervisory convergence across the EEA, as different interpretations both from the (re-)insurance undertakings and the NSAs have been found. These different interpretations of what a CIF may be, can have a direct impact on the notifications on outsourcing received by the NSAs.

The classification of a function or activity as CIF is the responsibility of the undertaking and it is to be done taking into account the specific undertaking’s business model and risk profile. To support the supervised undertakings in performing that classification, the NSAs are available (upon the undertaking’s request) to discuss the undertaking’s CIF classification and provide interpretative feedback before the undertaking submits the notification of outsourcing.

To further guide the undertakings in this complex process, some NSAs have published further guidance to that provided by the EIOPA Guidelines as regards the classification of a function or activity as critical or important. Other NSAs have published a list of CIF. The table below provides a picture of the identified practices.

TABLE 4 – LIST OR CRITERIA TO CLASSIFY CIF DEVELOPED BY SUPERVISORY AUTHORITIES

		Functions generally considered CIF as example/minimum requirement	
		YES	NO
Further Criteria	YES	LI, IT	FR, IE, NL
	NO	AT, BE, BG ²¹ , DE, DK, FI, LV, MT, SK, HU	CY, CZ, EE, ES, EL, HR, LT, LU, IS, NO, PL, PT, RO, SE, SI

The NSAs listed below provide further assessment criteria in addition to those set by Article 49(2) of Solvency II Directive and Guideline 60 of the System of Governance guidelines to be observed by

²¹ BG has a Circular on System of Governance currently in consultation the practices there are still not implemented in practice.

undertakings when assessing whether a function or activity to be outsourced is to be considered a CIF, all having regard to the fact that this assessment is responsibility of the undertakings.

- FR - the French Insurance Code sets additional criteria to be followed by undertakings in determining CIF: (a) cost of the outsourced activity; (b) financial and operational impact, as well as impact on the reputation of the undertaking if the service provider is unable to accomplish its activities within due delays (c) difficulty to replace service providers or restart activity directly by the undertaking itself; (d) the undertaking's ability to comply with regulatory requirements in case of problems with the service provider; (e) potential losses for policyholders or contract beneficiaries or for reinsured undertakings in case of failure of the service provider. In addition, the French Insurance Code provides criteria to assist undertakings in identifying functions or activities which should not be deemed as CIF. The PRC considers that the development of such criteria is a good example of what could be developed to identify CIF, regardless of the instrument used (for more information please see [Annex 3 – Best practices identified during the reference period](#))
- LI – FMA includes as part of the criteria to be considered by undertakings the correlation between the activity outsourced and the presence of additional outsourcing, to the same provider or relating to the same function, which, individually considered, may not be critical or important, but may become so where a relevant aggregation of several outsourced activities takes place.
- IE – CBI provides further non-prescriptive guidance to undertakings on how they should determine CIF in several publications²². Particularly, CBI requires undertaking to consider: (i) whether any inability of a third party provider to fulfil their part of the service, would prevent the undertaking from carrying out their business activities or impair them in providing services to their customer; (ii) functions that are necessary to perform core business lines or critical business functions as CIF, with an obligation for undertakings to demonstrate if not; (iii) as CIF, services provided to the undertakings by service providers where a disruption to the provision of such services could cause material customer detriment, harm market integrity, threaten policyholder protection, an undertaking's viability, safety and soundness or financial stability.
- IT – IVASS Regulation nr. 38/2018 on System of governance sets additional criteria to determine whether an activity qualifies as CIF. Particularly, the Regulation considers as eligible for CIF classification the activities that would seriously jeopardise (in case of disruption) the undertaking's ability to continue to comply with the conditions required to

maintain its operating authorisations, its financial results, its stability or the continuity and quality of its services to policyholder.

- NL – DNB issued an explanatory note providing the following additional criteria to help undertakings in identifying whether an activity qualifies as CIF: (i) critical nature and the inherent risk profile of the activities to be outsourced making reference to the business continuity and the liability of the outsourcing undertaking itself; (ii) the immediate operational consequences that an interruption of that activity may have and the associated legal and reputational risks; (iii) the impact of a disruption of that activity on undertaking's core activities or anticipated revenues; (iv) impact of a data breach may have on customers, members or policyholders.

As reported in Table 4 above, several NSAs published a list of functions or activities (either as examples of an open list or as minimum requirement²³) to be considered CIF by undertakings. The table below (Table 5) provides the list of CIF identified by EIOPA²⁴ and by the respective NSAs. If a NSA is not reported (CY, CZ, EE, EL, ES, FR, HR, IE, IS, LT, LU, NL, NO, PL, RO, SE, SI), it means that there is no explicit reference to a list of CIFs in their outsourcing frameworks. Furthermore, since recital 33 of Solvency II Directive says that key functions are important and critical functions, and this definition is applied throughout the EEA, the authorities having only key functions as CIF have not been reported in the table.

²³ In certain cases the wording used by the text published by NSAs reads "the function is generally considered as CIF" therefore in this context "minimum requirement" should be intended as a strong advice from the NSAs.

²⁴ The "EIOPA CIF" are included in the explanatory text to the Guideline nr. 60 of GLSoG.

TABLE 5– IDENTIFICATION OF CIF BY EIOPA AND BY SUPERVISORY AUTHORITIES

	EIOPA	AT	BE	BG ²⁵	DE	DK	FI	HU	IT	LI	LV	MT	PT ²⁶	SK
Design and pricing of insurance products	X		X	X	X	X	X	X	X	X		X	X	X
Sales		X			X									
Conclusion of contracts			X							X			X	X
Underwriting of risks/determination of insurance conditions						X				X	X	X		
Investment of assets or portfolio management	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Key Functions	X	X	X	X	X	X	X	X	X	X	X	X	X	X
AML/CTF									X			X		
ORSA process	X		X	X			X	X	X	X	X	X		X
Claims management/processing					X				X	X		X		
Claims settlement				X					X	X	X			
Claims handling	X					X				X		X	X	X
Contact centres management													X	
Accounting		X		X	X	X		X	X	X	X			X
Calculation of the technical provisions in accordance with Solvency II and the local GAAP/IFRS					X					X				
Provision of ICT									X		X			
Electronic data processing in relation to important typical insurance activities					X	X								X
IT Operations and safety						X								
Provision of ongoing, day-to-day systems maintenance or support	X			X			X	X	X	X		X	X	
Provision of data storage	X		X	X		X	X	X	X	X		X	X	X

INDIVIDUAL RECOMMENDED ACTIONS AS REGARDS THE DEFINITION OF CIF

A recommended action to define and share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function (CIF) was issued where no criteria for classifying an operational function or activity as CIF or a list of CIF existed. The NSAs of the following countries received a recommended action: **ICCS-CY, CNB-CZ, DGSFP-ES, Finanstylnet-NO, KNF-PL, ASF-PT, ASF-RO, FI-SE**. For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

²⁵ It is to be noted that the list of functions flagged in the table are the ones included in the “Draft Ordinance on the requirements to the system of governance of insurers and reinsurance”

²⁶ The list of CIF for ASF (PT) is not published but it is part of the supervisory practices adopted by the NSA.

2.1.4. BOUNDARIES BETWEEN OUTSOURCING OF DELEGATED AUTHORITY TO UNDERWRITE AND SETTLE CLAIMS AND (RE)INSURANCE DISTRIBUTION

When insurance intermediaries are used, undertakings can delegate authority to underwrite and settle claims on their behalf and on their account to these intermediaries. Guideline 61 of EIOPA Guidelines on the System of Governance states that, when that happens, the undertaking should ensure that the activity of this intermediary is subject to the outsourcing requirements²⁷.

Considering that the delegated authority of underwriting or settling claims is one of the most (if not the most) business critical activity of an undertaking, the supervision of this type of outsourcing, when material, plays an important role in the overall supervision of the undertaking itself.

The practice to grant delegated authority to service providers/intermediaries is more relevant in certain EEA Member States, and it is mainly, but not only, used by (re)insurance undertakings performing cross-border activities within the EEA. In case this practice is used in the context of cross border business, it is worth to notice that the outsourcing undertakings may not have a direct knowledge of the insurance market where they wish to operate and therefore leverage the knowledge of the service provider/intermediary. In certain EEA Member States, these activities (underwrite and settle claims) may be outsourced to Managing General Agents²⁸ ('MGAs').

As reported above, according to guideline 61 of EIOPA Guidelines on System of Governance, the boundary between "simple intermediaries" and "intermediaries subject to outsourcing requirements" is represented by the presence of delegated authority granted to them by a (re)insurance undertaking. To properly supervise the outsourcing of said activities under delegated authority, it is important that the NSAs clarify their supervisory expectations to the market. This is true both in the cases where the service provider operates in the same jurisdiction of the undertaking and when it operates cross-border and/or to support undertaking cross-border operations. Furthermore, since the activities to underwrite risks and to settle claims are core activities of the (re)insurance undertaking it is also important for the NSAs:

²⁷ "When an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an undertaking, the undertaking should ensure that the activity of this intermediary is subject to the outsourcing requirements.

²⁸ Although there is not a formal definition of MGAs in EU Law, the following is generally accepted and used. MGAs are entities coordinating and providing insurance and insurance related services to (re)insurance undertakings in exchange for a commission. Examples of services provided by MGAs are: (i) sub-contracting with independent agents for placement of business; (ii) negotiating commissions; (iii) handling claims (delegated authority from the undertaking); (iv) issuing policies (delegated authority from the undertaking); (v) processing endorsements; (vi) collecting policy premiums; and (vii) other policy administration or claims management tasks. Some MS do not recognize in their jurisdictions the concept of MGAs.

- to clarify whether the outsourcing is intended as outsourcing of a critical or important operational function or activity (CIF); and
- in case the outsourcing is a material part of the business of the undertaking / the market, to adopt specific supervisory approaches to ensure that the risks arising from that business model are properly understood and monitored by the (re)insurance undertaking.

The following approaches as regards (re)insurance undertakings granting to service providers/intermediaries delegated authority to underwrite and settle claims are highlighted:

1. the NSA considers all arrangements between (re)insurance undertakings and intermediaries as outsourcing²⁹ but not all subject to notification. In case there is outsourcing of delegated authority, the NSA expects the (re)insurance undertakings to consider such arrangements always as CIF and therefore perform a notification (*e.g.* BE, HR);
2. the NSA considers arrangements between (re)insurance undertakings and intermediaries as outsourcing arrangements only if there is delegated authority granted to them;
 - a) the NSA expects that (re)insurance undertakings consider such arrangements as CIF regardless of the threshold applied in the delegated authority (*e.g.* MT, DE, LI);
 - b) the NSA expects that the (re)insurance undertakings consider such arrangements as CIF on the basis of the materiality of the threshold applied in the delegated authority (*e.g.* AT, NL) or on the basis of the specific activity carried out by the intermediary itself (BG³⁰).
3. the NSA does not allow outsourcing of underwriting function (IT), see paragraph 2.1.2.1 for a description of the practices in Italy..

Although the most common approach in the EEA is the one reported under number 2 above, given the heterogeneous use of this type of outsourcing by EU undertakings, the peer review identified this area as one to be further clarified by EIOPA. Furthermore, where this type of outsourcing is used in the market and the NSA does not provide guidance on the point and/or it lacks clarity, the PRC opted for recommended action to the NSAs.

²⁹ In Belgium a Managing General Agent must register itself as “mandated underwriter” to be able to operate and is supervised by the FSMA.

³⁰ In its consultation regarding the Draft Ordinance on the requirements to the system of governance of insurers and reinsurance, FSC (BG) proposed underwriting to be considered as outsourced only where the intermediary independently carries out the activity of risk assessment, of determining the premium and of concluding the contract on behalf of the insurer. When an intermediary’s role is limited to introducing, proposing and carrying out preparatory work for the conclusion of an insurance contract, and therefore does not perform the risk assessment independently, the intermediary shall not be considered as underwriting on behalf of the undertaking, even where the intermediary signs the contract on behalf of the undertaking

INDIVIDUAL RECOMMENDED ACTIONS AS REGARDS THE BOUNDARY BETWEEN (RE-)INSURANCE DISTRIBUTION AND OUTSOURCING

A recommended action to further clarify with the market the understanding set out in Guideline 61 of EIOPA Guidelines on the System of Governance was issued where a lack of clarity seemed to exist for undertakings when to notify as outsourcing the delegation of authority to underwrite and settle claims on its behalf and on its account. The NSAs of the following countries received a recommended action: **FTNET-DK**, **CBI-IE** and **FI-SE**. For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

ACTION FOR EIOPA ON MGAs

One important conclusion to be taken is that despite Guideline 61 of EIOPA Guidelines on the System of Governance, further guidance may be needed to ensure convergence of supervisory practices regarding the MGAs-like business model. For further details on the action for EIOPA, please see [Annex 4 – Overview actions for EIOPA](#).

2.1.5. “EMPTY SHELL” UNDERTAKINGS

Having a minimum level of corporate substance is a principle embedded in Article 41 of the Solvency II Directive, and it should always be observed by undertakings and supervised by the NSA. The use of shell companies is not allowed, as they are incompatible with a transparent organisational structure and an effective system of governance, which provides for a sound and prudent management of business.

In relation to empty shells, an important distinction must be made whether undertakings belong to a group or not. In certain jurisdictions (*e.g.* DE, FI and FR) it is practice for undertakings belonging to a group to outsource all activities to their parent company (or another subsidiary of the group) becoming *de facto* “empty shells”. In the Member States named above, this practice is mostly happening within the same jurisdiction (*e.g.* undertakings outsourcing to their parent company located in the same Member State). It is not material in case of cross-border outsourcing.

Another important element to be considered relates to the practice of certain undertakings operating cross-border which distribute activities and functions to their EEA and third-country (mostly UK) branches. From a risk-based point of view this situation gives rise to similar supervisory considerations and concerns. Paragraph 2.1.7.4 on services provided in case of branches, provides an overview of the current practices highlighted by the peer review in this case.

The assessment carried out in this area by the peer review took into account the following dimensions:

- (1) the structure of the market and the presence of ‘empty shells’;
- (2) the presence of requirements set to define a minimum level of corporate substance avoiding ‘empty shells’; and
- (3) the supervisory practices to define an ‘empty shell’ and to ensure undertakings keep a minimum level of corporate substance.

As part of the review the PRC assessed the presence of undertakings with most of their functions and/or operational activities outsourced applying the different criteria defined by the NSAs, where applicable. The first finding of such assessment highlighted that the criteria to define an undertaking with most of its functions and activities outsourced is not harmonised across Europe and therefore the figures provided by the different NSAs are difficult to be compared.

Notwithstanding the above, it is noted that the presence of undertakings with most of their functions and activities outsourced is limited and concentrated in a subset jurisdictions (*e.g.* BE, DE, FR, DK, IE, IS, LI, LU, MT).

- In some cases, as described above, those undertakings relate to undertakings belonging to groups outsourcing almost all of their functions to the parent undertaking or another subsidiary of the group mostly located in the same country (e.g. DE³¹, FI and FR³²).
- In IE and LU there is a significant number of captive re-insurance undertakings which make extensive use of outsourcing to specific entities, managing for them almost the entire corporate activities. In this context, it is interesting to notice the model applied by CAA in Luxembourg. The CAA created the status of PSA (*“Professionnel du secteur de l’assurance”*) which are service providers of various insurance, administrative and back office services to (re)insurance undertakings³³. PSAs are licensed and subject to the supervision of the CAA. For example, the CAA is entitled to sanction the PSA including the withdrawal of licence. Before granting a license to a PSA, the CAA makes sure that it has the resources that are needed to accomplish their missions (depending on the type of PSA, for instance a provider of actuarial services must have sufficient and trained actuaries).
- Similarly to LU, MT has also created the Insurance Managers regime which are authorized and regulated by the MFSA. Therefore, before a licence is granted, they would be subject to an authorisation process by the MFSA. Insurance Managers form part of the insurance intermediaries regime. They may be engaged by insurance companies for specific services such as managing of an undertaking, the carrying out of a function and to assist companies in regulatory reporting amongst other services.

In order to ensure undertakings keep a minimum level of corporate substance, in 15 jurisdictions (AT, BE, DE, DK, FI, FR, HU, IE, LI, LU, MT, NL, NO, PL, RO) the legislator and/or the NSA has formalised a requirement / a supervisory expectation aimed at keeping the management and control activities within the undertakings. As general practice, those requirements appear to be of a principle based nature and need to be monitored through a careful supervisory activity.

To identify undertakings with most of their functions and activities outsourced, the majority of NSAs use expert judgement. Some NSAs (BE, CZ, DK, ES, FI, FR, HR, IE, LI, LU, MT, NO, SI) complement the expert judgement with additional high-level criteria to be used by supervisors (e.g. type of functions

³¹ The only type of ‘empty shell’ in Germany.

³² In some French groups there is a tendency to mutualize the activities, for instance by creating within those groups those so-called GIE —Groupements d’intérêt économique— which can be viewed as (critical) shared services providers (SSP). In some cases, the group GIE can be the sole employer of the group’s employees. Other configurations also exist: for instance, all staff working for a French (Life) insurance subsidiary of a French Group are, legally speaking, employees of another French insurance subsidiary (eg. P&C undertaking). Nonetheless, neither GIE nor this latter configuration is considered as “empty shells” by the ACPR.

³³ The different types of PSA are: (i) Management companies of captive insurance undertakings; (ii) Management companies of insurance undertakings in run-off; (iii) Management companies of reinsurance undertakings; (iv) Management companies of pension funds; (v) Authorised providers of actuarial services; (vi) Management companies of insurance portfolios; (vii) Authorised providers of governance-related services for insurance and reinsurance undertakings; and (viii) Claims handlers.

outsourced, number of functions outsourced, number of FTEs retained in the undertaking, business model and strategy of the undertaking, etc.) or with organisational arrangements (e.g. cross-departmental meetings) to ensure that an homogeneous approach is followed. Typically, once these undertakings' are identified, NSAs foresee *ceteris paribus* a more intensive set of supervisory activities to be performed by the supervisors.

The outcome of the PR assessment showed an overall lack of clarity and harmonisation in relation to the meaning of corporate substance both in terms of the communication to the market and in how the subject is supervised by NSAs. This may result in potential risks of un-level playing field and regulatory arbitrage.

ACTION FOR EIOPA ON EMPTY SHELLS

EIOPA will further analyse the possibility to develop guidance to assist NSAs to ensure corporate substance of undertakings and allow identification of empty shells. For further details on the action for EIOPA, please see [Annex 4 – Overview actions for EIOPA](#).

2.1.6. DEFINITION OF MATERIAL DEVELOPMENTS

According to Article 49(3) of the Directive, undertakings shall notify their NSA in case material developments regarding a previously outsourced critical or important function.

A material development regarding an outsourced critical or important function might significantly change the results of the risk assessment and/or the due diligence performed by the undertaking according to Article 49 of the Solvency II Directive and Article 274 of the Commission Delegated Regulation (EU) 2015/35. In addition, the comment on Guideline 64 of EIOPA Guidelines on System of Governance set out in paragraph 2.313 of the Final Report on Public Consultation No. 14/017 on Guidelines on system of governance provides examples of what could constitute a material change or development (e.g. sub-outsourcing, change on the service providers, material changes to the outsourcing arrangement, or major problems with the performance of the services).

Such notification constitutes an important supervisory tool that NSAs can use to be up to date with the potential changes and/or issues relating to the outsourcing of their supervised entities. In light of this importance, the peer review assessed whether the NSAs have shared with all relevant stakeholders their understanding of what would constitute a material development regarding an outsourced critical or important function.

The majority of NSAs do not provide either a definition or criteria to identify material developments in their jurisdiction. The NSAs of the following four countries are an exception. BG in the text of their new ordinance, DE in the already mentioned MaGo Circular and EL and IE in the text of the instruction to their notification processes.

In order to ensure that undertakings give proper consideration to material developments and to provide clarity to the market on when a notification is to be performed, it is important to share an understanding of the meaning of material developments in the context of outsourcing, also taking into account the market specificities. Not providing such clarity could result in different notification practices by undertakings and potentially missing important information for the NSA.

ACTION FOR EIOPA ON MATERIAL DEVELOPMENTS

EIOPA will further analyse the possibility to develop further guidance to NSAs on what should be considered material development of crucial and/or important functions and activities. For further details on the action for EIOPA, please see [Annex 4 – Overview actions for EIOPA](#).

2.1.7. RULES ON CERTAIN TYPES OF OUTSOURCING

Outsourcing is leveraged by undertakings in case of multiple types of functions and activities, each of them presenting their specific risks, also depending on the risk profile of the service providers. The peer review assessed whether the different NSAs provide specific requirements or guidance to the market. Our assessment focused on the following cases:

- outsourcing of specific functions or activities;
- intra-group outsourcing; and
- outsourcing to service providers established in third countries.

2.1.7.1. Outsourcing of specific function or activities

The Solvency II framework provides the same principle-based rules in case of outsourcing regardless of the type of function or activity outsourced. Only in case of ICT outsourcing, cloud outsourcing, outsourcing of a key function and outsourcing in the context of internal models, EIOPA provided further guidance to the NSAs. Particularly, for outsourcing to cloud service providers, EIOPA issued a dedicated set of guidelines in 2020³⁴, while for the others the guidance is embedded within a broader package of guidelines dedicated to the specific subject.

The PRC assessed if NSAs have issued specific guidance with requirements for undertakings in case of outsourcing of certain functions or activities. The result of that assessment highlighted that ICT outsourcing with a focus on cloud-related outsourcing is the area where NSAs have published guidance for the undertakings (e.g. BE, CY, CZ, DE, EL, FI, FR, IE, IS, LU, MT, NO, PL and RO).

2.1.7.2. Intra-group outsourcing

According to Solvency II, intra-group outsourcing does not differ from outsourcing to third party service providers. However, some degree of flexibility is recognised through the application of the principle of proportionality in the process of due diligence of the service provider. Article 274 of the Delegated Regulation requires undertakings to *“take into account the extent to which the undertaking controls the service provider or has the ability to influence its actions”*. In this context, the PRC assessed the presence of specific requirements for undertakings in case of intra-group outsourcing. The outcome of this assessment highlighted that in all the cases there is consistency between the EU and national frameworks and no further rules have been developed.

³⁴ EIOPA Guidelines on outsourcing to cloud service providers and EIOPA Guidelines [Guidelines on information and communication technology security and governance](#).

In addition to the above, only some NSAs provided further specifications and/or guidance to the market to better clarify their supervisory expectations (BE, DE, FI, FR, IE, IT).

- BE – NBB overarching circular on system of governance (§7.4.2) reminds of the Solvency II requirements reported above and highlights that an intragroup service provider is subject to group supervision. Furthermore, it provides specific requirements in case the outsourcing is done to a centralised service company (CSC) within the group, namely: (i) a centralised monitoring of the CSC at group level; (ii) where applicable, to have management monitoring system of the changes, for example in the CSC business processes; (iii) in case a centralised risk assessment to outsource a function to the CSC is performed, the obligation for the undertaking to tailor it to the undertakings making use of it; (iv) to have a list of all outsourcings provided by the CSC; (v) to ensure, where applicable, that the centralised exit plan can be effectively executed from the perspective of the outsourcing undertaking.
- DE – BaFin MaGo Circular (§13.6), in addition to remind the Solvency II requirements reported above, highlights that undertakings must avoid any automatic recourse to an intra-group service provider and requires the group to keep precise documentation regarding which legal entity has outsourced which function or insurance activity and to which service provider. Moreover, the FAQ to paragraph 269 of the MaGo Circular provides additional specifications where a centralised outsourcing controller (i.e. the individual responsible of the outsourcing arrangement) is appointed.
- FI – Following the already mentioned thematic review on outsourcing carried out in 2017, FIN-FSA's issued a supervisory letter in 2018. One of the topics which was addressed was the deficiencies identified in intra-group outsourcing and the expectations of FIN-FSA in this regard. FIN-FSA highlighted that undertakings are expected to (i) ensure that they have the ability to influence the service provider, (ii) provide general and operational instructions, and (iii) assess the suitability and reliability of the service provider in consideration when intra-group outsourcing takes place.
- FR – ACPR shared with the market their supervisory expectations in relation to intra-group outsourcing during the ACPR Conference 2018 (*"La Conférence de l'ACPR - Défis et perspectives du secteur de l'assurance, dans un univers réglementaire en évolution"*) in line with the Solvency II requirements reported above.
- IE – CBI's expectations are set in compliance with the Solvency II requirements reported above. Similarly for other areas of outsourcing, CBI's expectations are dispersed in multiple documents, which from 2021 onwards have been condensed in two major policy documents. With regard to CBI's expectations, which mostly remark the Solvency II requirements listed above, it is worth to note that: (i) intra-group outsourcing is treated

with the same care as outsourcing to third parties. Particularly in case of sub-outsourcing, it is expected that a pre-notification is performed by the intra-group service provider to the outsourcing undertaking and that a high level of data protection (same as in case of third party outsourcing) is ensured by the intra-group service providers. (ii) there is a supervisory focus in the cases of shared personnel between multiple entities, which is considered similar to outsourcing; (iii) undertakings need to apply to intra-group service providers operational resilience metrics.

- IT - Regulation 38/2018, issued by IVASS, includes simplifications of the administrative procedures for the undertakings, such as a shorter deadline when compared to extra-group outsourcing for 'prior to outsource' notification, as well as the possibility to outsource key functions to a service provider established in a third country upon prior authorisation by IVASS (outsourcing of key functions to service providers established in a third country, is not allowed if that service provider does not belong to the same group).

2.1.7.3. Outsourcing to service providers established in third countries

The practice to outsource to third country service providers is currently not material in the EEA. However, following Brexit and considering the expected further digitalisation of parts of the insurance value chain, this area of the framework, bundled with the practice of services provided by branches is worth further policy reflections at an EEA level.

In a nutshell, the NSAs consider, *ceteris paribus*, outsourcing to third country riskier than outsourcing in the EEA. That is the reason why two NSAs (AT and IT) developed specific notification processes, including approval by the NSA, two other (BE, DE) have identified more conservative and specific stricter conditions for this type of outsourcing. Furthermore, several NSAs apply a stricter supervisory scrutiny when notified of outsourcing to third country service providers (*e.g.* DK, ES, FR, IS, MT, NL, NO, PL, PT SE, SK). In order to perform on-site inspections involving third country service providers, few NSAs, for example NBB (BE) and ACPR (FR), consider as enabler to exercise their right of inspections to enter into a Memoranda of Understanding (MoU) with the third country's authorities. Other NSAs exercised their right to supervise as guaranteed by Solvency II without stipulating specific MoUs. The table below groups those NSAs on the basis of the type of requirements set in their Member States.

TABLE 6 – OUTSOURCING TO SERVICE PROVIDERS ESTABLISHED IN THIRD COUNTRIES

	List of respondents
Regulatory framework sets stricter conditions	BE, DE
Approval of outsourcing to third country service providers	AT, IT
Specific requirements in relation to third-country sub-outsourcing (to be considered in the risk assessment)	IE
No specific requirements, however the NSA considers outsourcing to third country service providers <i>ceteris paribus</i> riskier	CZ, DK, ES, FR, IS, NL, NO, SE, SK, MT, PL, PT
Requirements only in case of outsourcing to cloud service providers (out of scope of this peer review)	BG, EL

- BE, FI, IS, NL, PT: in case of outsourcing to service providers established in a third country, undertakings must provide specific additional information as part of the notification (in the case of IS and PT this information is the contract, in the case of NL information on the governing law of the outsourcing agreement is required). Moreover, FR, IS and NL focuses their supervisory assessment on the data location (where applicable).
- CZ and DK: the difference is on the supervisory assessment of the notification rather than on the notification process itself. The focus is placed on the possibility for the supervisory authority to supervise the function (information and access management).
- MT: the approach is similar to that of CZ and DK. In addition, the NSA expects (although the law is silent) data storage (servers) to be located in the EEA. In case they are located in non-EEA territory, the NSA would require an EEA relocation/replica. A similar approach on data storage is undertaken by KNF (PL).
- EE: there is no difference in terms of process. However, the NSA unofficially prefers/expects the undertakings to outsource only to EEA service providers.

2.1.7.4. Services provided by branches

The peer review identified the following three possible operating models involving branches.

- (i) An undertaking established in the EU has established, according to Articles 145 to 146 of Solvency II, one or more branch(es) located in another EEA Member State.

Given its setup, the insurance undertaking might decide to carry out its activities and functions to its EEA branch(es), not involving outsourcing to third party service providers. In this case, the usual practice is that the undertaking:

- notifies its NSA before setting up the branch and when material changes to the branch occur. As part of the information to be communicated to the NSA, the EU undertaking needs to include a “... *scheme of operations setting out, at least, the types of business envisaged and the organisation of the branch*”. A broad interpretation of the term

‘organisation’ would also imply communicating the location and the way of performance of the CIF of the Branch - at least the insurance activities.

- not perform any outsourcing notification Article 49(3) of Solvency II Directive.
- (ii) An undertaking established in the EU has established one or more branch(es) located in third countries. Given its setup, the insurance undertaking might decide to carry out its activities and functions to its third country branch(es), not involving outsourcing to third party service providers. In this case, the usual supervisory practices collected by the peer review shows that:
- In case of authorisation of new EU undertakings with third country branches there is a review performed by NSAs to understand where and how the CIF will be performed to ensure corporate substance.
 - In case an (already authorised) EU undertaking with its branch in a third country assigns CIF to the branch on behalf of the Head Office, no notification according to Article 49(3) of Solvency II Directive is requested. However, information on where and how CIF are performed are kept as part of ongoing supervision (cases observed in LU, IE, MT).
 - In case an (already authorised) EU undertaking with its branch in a third country assigns to the Head Office to perform CIF for the Branch, no notification is requested. However, information on where and how CIFs are performed are kept as part of ongoing supervision (with a limited level of intrusiveness than case above).

The peer review has concluded that this latter model is increasing in certain jurisdictions (*e.g.* CY, LU, IE, MT) due to Brexit. In those jurisdictions there are insurance undertakings relocated in Europe after Brexit which have allocated a set of core activities back to their UK branches. The business model of such undertakings is typically to operate cross-border providing their services in many EEA countries, including the one where they are established. Furthermore, it is noted that EIOPA is currently conducting an assessment of the business model described under point (ii).

- (iii) An undertaking established in the EU has established one or more branch(es) located in EEA and/or third countries. Given its setup, the insurance undertaking might decide to outsource its activities and functions relating to the branches to third party service providers. In case those functions are classified as CIF, undertakings will notify their NSAs applying the same process as per outsourcing of CIF relating to the Head Office.

A fourth model, not explored in detail by the PRC, relates to the distribution of activities and/or functions to its head office by a third country branch established in the EEA according to Article 162 of Solvency II.

The peer review has identified the distribution of activities from/to branches by EEA undertakings as an area where supervisory convergence and clarity of supervisory expectations might be needed to ensure that the principle of substance over form is respected (i.e. for example to request undertakings to perform a notification to their NSA in case they allocate CIF to their branches), that similar risks are treated in similar ways, and in case of activities performed by third-country branches of EU undertaking that the supervisory oversight of the activities is always guaranteed.

2.1.8. REQUIREMENTS RELATING TO RISK ASSESSMENT AND DUE DILIGENCE

According to Solvency II, undertakings need to perform a risk assessment on critical or important functions outsourced and a due diligence on the service provider³⁵. In this context, the PRC assessed the presence of specific requirements and additional guidance for undertakings on how the risk assessment and due diligence should be performed. Several NSAs (23 out of 30) have shared with the market their expectations on how undertakings should perform a risk assessment of a critical or important operational function. Many of those focused their guidance to the market in reinforcing the principles embedded in Solvency II requirements. Few NSAs provided further specifications and/or guidance to the market to better clarify their supervisory expectations (BE, DE, IE, and NL).

- BE – NBB overarching circular on system of governance (§7.3.1) indicates that the risk assessment to be performed by undertakings should comprise a documented scenario analysis of possible risk events, specifically including impacts of operational risk events and also focusing on concentration risks, aggregated risks (from several functions outsourced), step-in risks and mitigation measures. The risk assessment should also take into account a costs/benefits analysis.
- DE – BaFin MaGo circular (§13.3) indicates that the risk assessment to be performed by undertakings must play an important role in any fundamental decision in favour of or against outsourcing. Furthermore, the MaGo circular indicates the risk categories the undertakings need to consider (*i.e.* strategic, operational and reputational risks including concentration risks if multi-client service providers are used). The circular clarifies the expectation that the assessment is to be re-performed in the context of essential changes. In relation to IT outsourcing, BaFin VAIT (*Versicherungsaufsichtliche Anforderungen an die IT*) provides further operational details.
- IE – as reported in previous points above, CBI has published a number of papers and guidance to the market on outsourcing. When looking at the reference period, they have translated their supervisory expectations on the risk assessment and due diligence through practical guidance to the market participants in their discussion papers published in the past years, which have been translated into more formal guidance published at the end of 2021 out from the reference period.

³⁵ Risk assessment on the outsourced function in compliance to Art. 49(2) of Solvency II Directive and Art. 274(1), (3)(e), (5)(b) of Delegated Regulation. Due diligence on the service provider in compliance to: Art. 49(2) of Solvency II Directive and Art. 274 (2) and (3)(a), (b) and (f) (5) (a) (c) and (d) of Delegated Regulation.

- NL – DNB published a set of good practices on outsourcing where it has reported its supervisory expectations including on the risk assessment and due diligence providing a detailed set of risks and elements to be considered when assessing the outsourcing.

The other authorities have implemented the regulatory framework set by Solvency II and they provide further supervisory guidance and expectations when needed, through bilateral interactions with the undertakings as part of their supervisory activities.

2.2. NOTIFICATION PROCESS

The Solvency II framework on outsourcing foresees a notification from the undertaking to their National Supervisory Authority (NSA) both prior to the outsourcing of a critical or important function or activity and in case of any subsequent material development to such function or activity (Article 49(2) of Solvency II Directive).

This requirement gives NSAs the opportunity to discuss concerns with the undertaking, in case the outsourcing appears not to comply with the regulatory requirements of Solvency II Directive and of the Commission Delegated Regulation (EU) 2015/35, and the opportunity to object to the outsourcing where supervisory concerns arise.

Adopting a preventive and proactive approach by sharing concerns and/or requiring the undertakings to implement changes to their outsourcing arrangements and/or to their organisational and governance structures to manage the outsourcing before the outsourcing (or the actions undertaken following a material development) becomes fully operational, prevents the identified risks to spread creating potential disruption to the services provided to the policyholders and/or beneficiaries, and potentially leads to a minor cost of compliance for the undertakings in comparison to the implementation of changes when the outsourcing is fully operational.

The lack of performing a proper supervisory review of outsourcing notifications might have impacts on:

- the NSA's understanding of risks associated to outsourcing creating a potentially inaccurate picture of the risk profile of the undertakings;
- from the perspective of the undertakings themselves, the risk that they reduce their attention on performing thorough assessments before notification, in case they perceive a limited focus of the NSA on that area.

In addition, developing and making use of internal procedures supporting the supervisory scrutiny of the notification has several other positive effects, both on the supervisory authority and the

undertakings. For example, from the perspective of the NSA, it enables a more tailored, structured, consistent and focused review of the notification reducing, for example, the time of review of the standardised elements of the notification (*e.g.* contractual requirements) leaving more time for the supervisors to focus on the risk assessment or the due diligence on service provider. In short, it contributes to the NSA's assessment of the undertakings' compliance with Article 49 of Solvency II Directive (Article 36(2)(a) of Solvency II Directive).

In relation to the notification process, the peer review assessed the structure of the process implemented by the NSAs in the following areas:

- Timeframe for notification, which is the timeframe for the undertakings to notify the NSAs.
- NSA's feedback to the notification. Type of feedback provided by the NSAs to the received notification including the related timeframe to share it with the undertakings.
- Structure of the notification. Presence of a template or other form to structure the information, and type of information (including written agreement between the undertaking and the service provider) requested to the undertakings.
- The differences in terms of process between notifications in case of 'material developments' and 'prior to outsourcing'.

2.2.1. RESULTS OF THE ASSESSMENT

2.2.1.1. Timeframe for notification

Article 49(3) of Solvency II Directive establishes that insurance and reinsurance undertakings must, *in a timely manner*, notify the supervisory authorities prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities. In addition, Paragraph 2.311 of the Final Report on Public Consultation No. 14/017 on Guidelines on System of Governance states that *"The requirement for an undertaking to notify its supervisory authority in a timely manner prior to outsourcing any critical or important functions or activities presents an opportunity for the supervisory authority to discuss concerns with the undertaking, in case the outsourcing appears not to comply with the provisions of Solvency II Directive and the Commission Delegated Regulation (EU) 2015/35 and the opportunity to object to the outsourcing if supervisory concerns cannot be dispelled."* As shown in the table below, the national legislators followed divergent approaches as regards the definition of "timely". The majority of the Member States opted to not define "timely" and the relevant NSA also did not provide any guidance on what should be considered as a "timely" notification.

The PRC also assessed the number of delayed notifications³⁶, which were rare and therefore considered of less relevance (compared to other areas) for the purpose of this report.

TABLE 7 - NOTIFICATION REQUIREMENTS 'PRIOR TO OUTSOURCING'

Not set	5 days	15 days	30 days	6 weeks	60 days
AT, BG, DK, EE ¹ , FI, EL, IS, LI, LU, NL, PT, ES, SE	HU	LT, DE ⁵ , RO	CY ² , LV, PL, SK	BE ³ , CZ ³ , FR, IE, SI	IT ⁴ , HR, MT, NO

1. EE regulation set a timeframe equal to 30-days for notification requirement relating to key function outsourcing. For other CIF there is no set timeframe, the notification must be performed prior to outsourcing.
2. CY regulation set a timeframe equal to 1 month prior to the outsourcing. Normalised to 30 days.
3. BE and CZ apply 6 weeks as indicative timeframe.
4. IT regulation set a timeframe equal to 45 days for intra-group outsourcing, 60 days for external outsourcing within the EEA.
5. DE regulation requires undertakings to perform an immediate notification of the intention to outsource CIF. According to the Civil Code, the meaning of "immediate" is equal to two weeks' time. Normalised to 15 days.

2.2.1.2. Feedback to the notification

An important aspect concerning the feedback to the notification given by the NSA are the cases where the NSA has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place. In other words, when the NSA has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place (i.e. that the requirements of Article 49(2) of the Solvency II Directive will be breached by the outsourcing notified by the undertaking).

While acknowledging that the Solvency II notification process is not an approval process, the supervisory challenge at notification gives the opportunity to the NSAs to object to the outsourcing in case relevant problems related to the latter are identified and supervisory concerns cannot be dispelled. The PRC highlighted three NSAs which do not formally retain the power to object the entering into force of an outsourcing agreement (FR, RO and SE). Where these NSAs have concerns with the notified outsourcing, they would engage in a dialogue with the undertaking both prior and after the outsourcing starts, which however may not formally prevent the undertaking to enter into the outsourcing arrangement and therefore, negative consequences may materialise.

In relation to the NSA's feedback to the notification, the NSAs can be split in four groups, as displayed in the table below.

³⁶ A delayed notification is a notification submitted to the respective NSA after commencement of the outsourcing, not respecting the time-frame stipulated by NSA or not giving enough time to the NSA to assess its content.

TABLE 8 - FEEDBACK TO THE NOTIFICATION 'PRIOR TO THE OUTSOURCING'

1. The NSA approves the notification/outsourcing	AT ¹ , LI ² , IT ³
2. The NSA always replies to the notification	BG, FI, LV, MT, PT, SK, HR, SE ⁴
3. The NSA replies to the notification if it shares/requests info or requirements with/to undertaking	CY, CZ, DE, DK, EE, EL, HU, IS, NL, IE, LT, ES, PL, BE, FR, SI, NO ⁵ RO
4. Other approaches	LU ⁶

1. AT - FMA approves critical/important outsourcing if the service provider is a non-EEA (re)insurance undertaking. In relation to outsourcing not subject to approval, generally FMA provides a reply to undertakings' notifications.
2. LI – FMA approves any outsourcing, including when it does not relate to CIF. Furthermore, the FMA approves sub-outsourcings on any level in the same way as “direct” outsourcing
3. IT – IVASS approves critical/important outsourcing to non-EEA service providers. . In relation to outsourcing not subject to approval, generally IVASS intervenes only if there is danger for the sound and prudent management of the undertaking, asking for modification or withdrawal from the contract.
4. SE – Finansinspektionen provides an acknowledgement of receipt of undertakings; notifications.
5. NO – Finanstilsynet always gives feedback to notifications relating to ICT outsourcing.
6. LU – CAA approves the outsourcing in particular cases, such as: if the outsourcing implies a modification of the business plan and when there is the change from external to internal model.

INDIVIDUAL RECOMMENDED ACTIONS CONCERNING THE FEEDBACK TO NOTIFICATION

Recommended actions were issued when NSAs did not present evidence of having pre-emptive supervisory powers which allow them to object a notified outsourcing where a NSA has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place (i.e. that the requirements of Article 49(2) of the Solvency II Directive will be breached by the such outsourcing). This recommended action was issued to **ACPR-FR, ASF-RO, FI-SE.**

2.2.1.3. Structure of notification

The structure of notification is driven by the outsourcing assessment performed by the NSAs and by their respective supervisory practices.

The typical structures of notifications can be summarised in:

- ▶ Contract-based notification (one notification contains only one contractual arrangement). Regardless of the activity outsourced or the number of service providers to which the activity is outsourced, the undertaking submits to the NSA a notification per contract. This may result in

(i) several notifications for the same activity outsourced in case, for example, there is a split between two (or more) service providers; or (ii) one single notification for multiple activities, in case they are performed by one single service provider and regulated through a frame agreement.

- ▶ Activity-based notification (one notification can contain multiple contractual arrangements). For each activity outsourced, regardless the number of service providers or contracts stipulated by the undertaking, the undertaking submits a single notification to the NSA. In case of a portfolio of activities: (i) the NSA might receive one notification for service(s) performed by multiple service providers; or (ii) multiple notifications for activities performed by one single service provider and regulated through a frame agreement.
- ▶ Mix of contract- and activity-based notifications. Undertakings can bundle together activities and contracts without a pre-defined specific rule in relation to the notification.

In several occurrences, NSAs have developed templates to be filled in by the undertakings at notification. The use of a template containing information to be submitted to the NSA on the outsourced activity, the service provider (or material developments thereof), and other elements regarding the exercise of the outsourced activity, including the relevant contractual arrangements governing the outsourcing should prevent the submission of incomplete and inconsistent information. In addition, through the use of a template, it is simpler for NSAs to ensure that, prior to outsourcing a critical or important operational function, an undertaking has performed the risk assessment on the activity outsourced as well as the due diligence on the service provider (see paragraph 2.1.8 for further details on the guidance issued by NSAs on this regard).

The table below provides a picture of the different structure of outsourcing notifications available in the EEA, indicating whether the NSA has (or has the intention to) developed (develop) a template for undertakings.

TABLE 9- STRUCTURE OF NOTIFICATION AND USE OF TEMPLATE

		Template		
		No	Under development	Yes
Structure	Activity-based	AT, CZ, FI, HR, SE		FR ² , IE, NL, NO, PL
	Contract-based	BG, CY ³ , DE, LV		ES, HU ⁴ , MT, SK
	Mix of contract- and activity-based	EE ⁵ , IS ⁵ , LT, PT, RO, SI	LU	BE ⁶ , DK, EL, IT ¹ , LI

1. IVASS provides Italian undertakings with a specific templates to be fulfilled in case of CIF outsourcing. Furthermore, IVASS Reg. 38/2018 requires a minimum set of information to be reported by undertakings within their notification.
2. In case several service providers are included in one notification, usually French undertakings submit a notification containing a specific line per service provider.
3. The template for outsourcing notification used by Cypriot undertakings is not specifically related to outsourcing but it is used by undertakings to notify fit and propriety information to the ICCS. This is because ICCS focuses on the supervision of outsourcing of key functions.
4. The template for outsourcing notification developed by MNB contains a sub-set of information typically need by NSAs to perform their supervisory review of the notification.
5. Icelandic undertakings need to perform one notification per outsourcing arrangement in case of outsourcing to cloud service providers. In case of other type of outsourcing, the notification can contain multiple functions and/or multiple contractual arrangements.
6. A notification performed by BE undertakings can contain multiple contractual arrangements, as for example one portfolio outsourced for several activities performed by a single service provider (many activities one contract); one Master Service Agreement for a pool of services providers containing itself several Services Level Agreements per functions/activities outsourced (many activities, many contracts). It is also possible to perform a notification containing one activity regulated through a single contractual arrangement.

In addition to the above, the PRC assessed the type of information to be included within the notifications submitted by the undertakings starting from the one foreseen in Guideline 64 of the EIOPA Guidelines on System of Governance . Overall, the picture is not homogenous across the EEA.

In its assessment, the PRC concluded that a template for a notification should contain, as a minimum, the following information: (i) a description of the scope and rationale of the outsourcing; (ii) identification (including statutory details, of the service provider); (iii) reasons why the activity being outsourced is a CIF; (iv) summary with the results of the above mentioned risk assessment and due diligence (including the identification of any, or potential, conflict of interests and how they will be mitigated/avoided); (v) evidence that the written arrangement between the undertaking and the service provider complies with Article 274 of the Commission Delegated Regulation (EU) 2015/35; (vi) where the outsourcing is intragroup, a description on how the undertaking controls the service provider or is able to influence its actions; (vii) where a material development is notified, a description thereof also including the information in the previous points; and (viii) where a termination of an outsourcing arrangement is notified (which can also be considered as a material development), the reason for such termination, and how the activity or function will be performed by the undertaking in the future.

The effectiveness of supervision at notification will be enhanced with the above mentioned collection of information from the undertakings intending to outsource a function or activity (or in case of a material development thereof). Such structured notification also increases the transparency of the process and improves the likelihood for undertakings and supervisors to identify potential risks before the outsource becomes fully operational. One of the most successful ways to

structure the notification is asking the undertakings to submit a set of information in the format of a template.

Among the NSAs making use of a structured process and of a template to collect undertakings notifications, the PRC has identified NBB (BE), DGSFP (ES), ACPR (FR) and MFSA (MT) as best practices. See [Annex 3 – Best practices identified during the reference period](#) for a summary of the practices of these NSAs.

2.2.1.4. Notification in case of material developments

As reported in paragraph 2.1.6, there is a need to clarify the definition of material developments implemented and applied by NSAs. This lack of clarity is reflected in the results of the PRC's assessment in relation to the process to be followed by undertakings and NSAs in case of notifications due to 'material developments' (2.2.1.4).

The majority of NSAs reported that the notification process and requirements are the same in case of 'material developments' and the notification 'prior to outsourcing'. The only difference relates to the timeline for undertakings to notify their NSAs.

Among the several types of material developments that can occur to a critical or important function outsourced, the termination of the outsourcing is one of the most significant changes triggering a set of events which can be potentially disruptive for the operations of the undertakings (i.e. re-insurance of the CIF outsourced, outsourcing to another service provider, termination of the CIF). Out of 30 NSAs, 23 reported that there is a notification requirement in case of termination of the outsourcing as part of the notification in case of material developments. There are differences in terms of the information requested (*e.g.* some NSAs require their supervised entities to report the rationale of the termination) and the supervisory approach in assessing them.

Seven NSAs do not instruct undertakings to report a termination of the outsourcing (BG, DK, EE, IS, LV, PT, RO). In these cases, it is left to undertakings' own initiative to notify their NSAs in case of termination of the outsourcing arrangement.

INDIVIDUAL RECOMMENDED ACTIONS ADDRESSING THE NOTIFICATION PROCESS IN CASE OF NEW OUTSOURCING OR MATERIAL DEVELOPMENTS THEREOF

Recommended actions were issued when NSAs did not present evidence of having a sufficiently developed structured approach regarding the information being requested from the undertaking at notification. Recommend actions on this topic were addressed to **FMA-AT, ICCS-CY, CNB-CZ, BaFin-DE, EFSA-EE, FIN-FSA-FI, HANFA-HR, MNB-HU, BL-LT, FCMC-LV,**

Finanstylnet-NO, ASF-PT, ASF-RO, Finansinspektionen-SE, AZN-SI. For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

2.3. SUPERVISION OF OUTSOURCING AT NOTIFICATION

As reported above, the Solvency II framework on outsourcing foresees a notification from the undertaking to their NSA both prior to the outsourcing of a critical or important function or activity and in case of any subsequent material development to such function or activity (Article 49(2) of Solvency II Directive).

This requirement gives NSAs the opportunity to discuss concerns with the undertaking, in case the outsourcing appears not to comply with the regulatory requirements of Solvency II Directive and of the Commission Delegated Regulation (EU) 2015/35, and the opportunity to object to the outsourcing where supervisory concerns arise.

Adopting a preventive and proactive approach by sharing concerns and/or requiring the undertakings to implement changes to their outsourcing arrangements and/or to their organisational and governance structures to manage the outsourcing before the outsourcing (or the actions undertaken following a material development) becomes fully operational prevents the identified risks to spread creating potential disruption to the services provided to the policyholders and/or beneficiaries; and potentially leads to a minor cost of compliance for the undertakings in comparison to the implementation of changes when the outsourcing is fully operational. The lack of performing a proper supervisory review of outsourcing notifications might have impacts on the NSA's understanding of risks associated to outsourcing creating a potentially inaccurate picture of the risk profile of the undertakings. From the perspective of the undertakings themselves, the lack of proper supervision may lead to the risk that they reduce their attention on performing thorough assessments before notification in case they perceive a limited focus of the NSA on that area.

In addition, developing and making use of internal procedures supporting the supervisory scrutiny of the notification has several other positive effects, both on the supervisory authority and the undertakings. For example, from the perspective of the NSA, it enables a more tailored, structured, consistent and focused review of the notification reducing, for example, the time of review of the standardised elements of the notification (*e.g.* contractual requirements) leaving more time for the supervisors to focus on the risk assessment or the due diligence on service provider. In short, it contributes to the NSA's assessment of the undertaking's compliance with Article 49 of Solvency II Directive (Article 36(2)(a) of Solvency II Directive).

2.3.1. RESULTS OF THE ASSESSMENT

The approach on the supervision of outsourcing is very different across NSAs and it is difficult to find a common trend among them. However, the PRC outlined the following two major practices in relation to the supervision of outsourcing at notification (in both cases, prior to outsource and in case of material developments). The NSAs can be segmented between those performing a “comprehensive review” of the notification with a detailed review of the notification aiming at challenging what has been reported by the undertakings to ensure that all material risks are mitigated, and those performing an “administrative review” aimed at verifying the formal compliance of the notification to the legal requirements, leaving more detailed assessments to ongoing supervision.

The following criteria were used to identify the two different cases above:

- the actual supervisory practice at notification on the basis of the review of the documentation, including the risk assessment on the CIFs outsourced and the due diligence on the service provider;
- whether the NSA reviews the outsourcing arrangement at notification, with evidence if such review is performed always (after each notification received) or on applying a risk-based approach;
- whether the NSA has applied specific supervisory measures to the undertaking after the supervisory review at notification; and
- whether the NSA has developed an internal procedure to supervise outsourcing.

2.3.1.1. Supervisory review of notification prior to outsource and in case of material developments

As reported in paragraph 2.1.8, undertakings need to perform a risk assessment on critical or important functions outsourced and a due diligence on the service provider. The risk assessment and due diligence are typically performed by undertakings as part of the decision making process prior to outsourcing a CIF and reviewed in case of material developments.

Notwithstanding the fact that the ultimate responsibility of outsourcing remains in the outsourcing undertakings, supervisors should perform a review of the above-mentioned risk assessment and due diligence as part of their supervisory review of notifications.

As described above, leveraging on their approach to review the notifications, the NSAs can be segmented between those performing a “comprehensive review” or an “administrative review”.

The NSAs belonging to the first category, i.e. “comprehensive review”, are: BE, CZ, EL, IE, IT, LI, MT, and PL.

- Some NSAs have defined comprehensive internal procedures followed by supervisors and perform a fully-fledged review of the notifications received engaging in dialogue with the undertakings, with some having defined attestation to be produced by the undertakings certifying compliance to the Solvency II requirements. Typically, the majority of these NSAs apply a risk-based approach in the review of the outsourcing arrangements: normally, it is performed when the type of outsourcing is particularly new, complex, relating to key functions, data processing and storage, or statutory functions and when it is relating to a material part of the business of the outsourcing undertaking. Furthermore, considering the materiality of this type of outsourcing, two NSAs (IE, MT) have developed specific procedures to guide supervisors in their review of outsourcing notifications to MGAs. In addition to that, one NSA (MT) has developed a dedicated scoring tool to be used by supervisors to prioritise and execute their supervisory review in a more risk-based manner.
- Among these NSAs, it is worth mentioning the practices of FMA (LI), being the only supervisory authority approving the notification. Particularly, FMA (LI) performs a thorough review supported by a very detailed notification template³⁷ of the notification considering how operational, strategic and legal risks have been taken into account by the undertakings in their decision to outsource and the selection process of the service provider.

As depicted in the next paragraph, the NSAs belonging to this first category are among the ones applying of supervisory measures at notification.

The NSAs belonging to the second category, i.e. “administrative review” are: AT, BG, CY, DE, DK, EE, ES, FI, FR, HR, HU, IS, LT, LU, LV, NL, NO, PT, RO, SE, SI³⁸ and SK. The supervisory authorities belonging to this category mostly supervise outsourcing arrangements only during on-site activities. Among them:

- Some NSAs perform a thorough compliance review of the notification with a focus on compliance of the outsourcing arrangements to the contractual requirements stipulated by Article 274 DR and then share its outcome with the supervisors in charge of the undertakings and used to plan future supervisory actions.
- Another group of NSAs perform only basic administrative checks relating to the notification, leaving all supervisory activities to ongoing supervision.
- Some NSAs (BG, CY, EE, ES, FI, LU, RO, SE, SK) review certain areas of the notification or apply certain focus on the contractual arrangements, but without having defined a clear internal

³⁷ Being the only authority approving all notifications, LI has designed a very detailed template which helps supervisors in their review. The FMA template can be recovered here:

³⁸ It is noted that AZN (SI) is gradually enlarging the scope and enlarging the approach of notification’s review from November 2020.

process nor a methodology followed by supervisors. The impact of the latter is different considering the size and complexity of the NSA and the market it supervises.

- BaFin’s assessment of CIF notifications by undertakings is carried out under the “MaGo” Circular (Circular 02/2017 (VA)-Minimum Requirements under Supervisory Law on the System of Governance of Insurance Undertakings). Furthermore, BaFin has internal guidelines on outsourcing in place, contained in a robust document that explains the requirements and main topics of the ongoing supervision in the area of outsourcing. However, it does not include the procedure supervisors should follow at the notification stage to ensure that supervision at the moment of notification is being performed in a consistent way across similar cases.

2.3.1.2. Supervisory review of the outsourcing arrangement

As described above, one of the most important areas of assessment at notification is represented by the review of the outsourcing arrangements. The table below provides a snapshot of the supervisory practices registered by the PRC. After the table, it is provided a summary of the main challenges experienced by the NSAs in performing such reviews.

TABLE 10 - REVIEW OF CONTRACTS AT NOTIFICATION

Yes, always	AT, BG, DE, FI, HR, LI, LV, MT, SI, SK	The review of the contract is an (essential) part of the NSA assessment.
Yes, excerpt of contract	NL	Only specific clauses are requested to NSAs
Yes, only in specific cases	BE, CY, EE, EL, FR, HU, IT, IS, LT, LU, PL, PT, RO, IE	The trend is to ask the contract in case of KF or data storage, or when the assessment on the notification shows supervisory concerns.
Other approaches	CZ, DK, ES, NO, SE	<ul style="list-style-type: none"> • CZ requires summary of the contract and assurance that supervisory rights are preserved • DK contracts reviewed during on-site inspections • ES requires statement which declares that DR is complied with • NO assesses only arrangements related to ICT outsourcing • SE requests excerpts of the contract when it considers it necessary

As described in paragraph 2.1.1.1, there is a different level of the use of outsourcing by EEA undertakings and, therefore, the NSAs reviewing their contracts have experienced different challenges in the supervision of outsourcing contracts.

Typical challenges experienced by NSAs in supervision of outsourcing arrangements relate to:

- Contractual framework. The complexity of contracts varies depending on the size and corporate structure of undertakings and service providers, making the application of the proportionality principle a material challenge for supervisors.
 - For large international firms, the existence of Master Agreements, Services Level Agreements and lots of annexes is seen often;
 - For medium size undertakings, it may be an “Outsourcing Agreement” with or without annexes; and
 - For very small firms it may be a basic contract focusing mainly on the financial and budget aspects and not on the prudential requirements.
- Complexity of the contracts endangering the overall compliance of the outsourcing arrangement with Article 274 point 4 of the Delegated Regulation. Particularly; but not limited to, in case of contractual arrangements with global service providers, the arrangements are becoming increasingly complex and standardised, making the legal and operational review by NSAs a challenge and difficult to request changes in a standardised contracts.
- Audit rights and access to documentation both for undertakings and NSAs. Particularly but not limited to in case of contractual arrangements with global service providers, the actual effectiveness of the audit clauses may not be the same as the contractual representation. This happens mostly but not limited to in case of ICT and cloud outsourcing. Examples of non-ICT outsourcing with similar issues relate, for example, to cases of outsourcing of asset management and investment services. In relation to the access to documentation, it might happen that supervisors take more time than expected to access documentation relating to the performance of outsourcing services.
- Sub-outsourcing. The compliance with Article 274 point 4 let (k) and (l) of the Delegated Regulation relating to the terms and conditions of sub-outsourcing, is an operational challenge for undertakings³⁹ as it reduces the ability to monitor long chains of sub-outsourcing, particularly if the sub-contractor is located in a third country.
- Termination of contract (exit strategy and assistance of the service provider). The actual effectiveness of exit strategies may in some situations not be the same as the contractual representation. Therefore, the supervisory review is mostly focused on the completeness of the risk assessment and due diligence.

³⁹ Several NSAs require undertakings to report details on their sub-outsourcer both at notification and in case of material development.

- Termination of contract (notice period). Service providers might have possibility to terminate the contract with undertakings with or without limited notice period.
- Data protection and data storage. Compliance with GDPR requirements is still a challenge.

2.3.1.3. Supervisory measures taken at notification

The PRC assessed the supervisory measures applied by the NSAs following their supervisory review of notifications as a proxy to understand the intervention of the NSAs to mitigate the risks relating to an outsourcing arrangement before it enters into force. It is to be noted that many supervisors, instead of using specific supervisory measures, engage with their supervised entities through supervisory dialogue.

In a nutshell, the focus on NSAs relates to the correctness, completeness and compliance of the outsourcing arrangements with Article 274 of Solvency II Delegated Regulation. In few cases, NSAs require undertakings to review their sub-outsourcing arrangements or to change the service providers.

Out of 30 NSAs, 13 (CZ, LV, LU, EL, LT, RO, SK, SE, ES, HU, EE, PL) reported that they never applied supervisory measures in addition of asking additional information towards undertakings at assessment of notification.

TABLE 12 – SUPERVISORY MEASURES AT ASSESSMENT OF NOTIFICATION

Type of supervisory measure	NSA making use (at least once) of the supervisory measure
Request to change contract	AT, BE, BG, CY, DE, DK, FI, FR, HR, IE, IS, IT, LI, LV, MT, NL, NO, PT, SI and SK
Request to withdraw contract	NO
Request to change service provider	BE, ES, IE, IS, LI and MT
Fines or other sanctions	IE and IT
Sub-outsourcer assessment	AT, BE, FI, IE, LI, MT, NO and SE
Other supervisory measures	BE, CY, CZ, FR, HR, HU, IE, IT, LI, MT, NL, PL, PT, SI and SK

With reference to the supervisory measures marked as “other” it is important to note that most of the actions performed by NSAs relate to:

- request of additional information as part of notification procedure (BE, CY, CZ, FR, HR, HU, IT, MT, PL, SI and SK);

- request to the undertaking to implement additional controls/monitoring system on outsourcing (BE, IT and MT);
- Request to the undertaking to review and improve the business case, risk assessment and due diligence of the outsourcing arrangement (HR as part of its ongoing supervision, IT, PL and PT)
- request to the undertaking to set up an outsourcing compliance committee (LI);
- request to the undertaking to amend outsourcing policies / procedures (FR).

INDIVIDUAL RECOMMENDED ACTIONS ADDRESSING THE ASSESSMENT OF NOTIFICATION REGARDING THE OUTSOURCING OF A CIF

Considering the above said, recommended actions were issued to NSAs where the assessment of the notification of a critical or important function or activity is mostly an administrative task, or where said assessment can benefit from an harmonised approach through the development of internal guidance: **ICCS-CY, BaFin-DE, DGSFP-ES, FIN-FSA-FI, ASF-RO, Finansinspektionen-SE, NBS-SK.**

In relation to their supervisory practices at notification, **MFSA-MT** and **Finanstilsynet-NO** have been addressed with specific recommended actions relating to their internal processes and practices.

For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

2.4. DOCUMENTATION REQUIREMENTS FOR UNDERTAKINGS

The PRC assessed whether the regulatory framework sets specific requirements on the documentation by undertakings of their outsourcing arrangements (*e.g.* register of outsourcing activities) and whether such requirements are applicable to all outsourcing or only to CIF. The table below provides an overview of the 16 out of 30 NSAs reporting that their regulatory framework details the Solvency II documentation requirements.

TABLE 13 - IMPLEMENTATION OF SOLVENCY II DOCUMENTATION REQUIREMENTS

	Law	Other legal instruments issued by the NSA (e.g. Circulars, Ordinance, Regulation)	Supervisory expectation publicly set	Supervisory expectation set on dialogue with undertaking	Indirect requirement
Register of all outsourcing, flag on CIF	HU, PL	BE			
List of all outsourcing, flag on CIF			ES	CZ, DK, HU	
List of notified outsourcing (CIF)	FR ² , SI		IE	MT ¹ , NL, NO	LV
List of documentation to be kept	DE ³	IT			

“Register” is to be understood that fields are set by NSA/law | In case of “List” the fields are free but there must be a list with information kept by undertakings.

- 1 In MT there is a specific national reporting template submitted by undertaking to MFSA where info on binding agreements is to be reported (Underwriting outsourcing).
- 2 In FR, the ACPR considers as a best practice to keep a list with information on outsourced functions not only for CIF but also for the non-CIF outsourced.
- 3 In DE undertakings are required to keep records of their outsourced functions but not in a specific format or manner.

2.5. DOCUMENTATION AND INFORMATION MANAGEMENT BY NSA

In view of the growing importance of the use of outsourcing by undertakings, it is important for the NSAs to establish an internal and regularly updated repository of information which allows to adequately identify potential risks, namely concentration risks, and prioritise supervision of outsourcing of key functions or other CIF to the same service providers. Therefore, an internal register or database, which includes information on outsourcing per undertaking, such as the key functions and other CIF being outsourced, as well as the relevant service providers, has proved to be a fundamental tool to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level. The overview of outsourced CIF or activities per (re)insurance undertaking would also support the identification of empty shells.

The peer review assessed the management of information related to outsourcing arrangements and to the outsourced functions of their supervised entities along the following areas:

1. NSA’s internal register of outsourced functions or activities per undertakings and service providers;

2. Other elements, such as whether the NSA has introduced/plans to introduce ICT tools to manage the information received from undertakings on outsourcing.

2.5.1. RESULTS OF THE ASSESSMENT

The development of a repository of information is highly beneficial to the supervisor. It assists NSAs to better highlight risks arising from outsourcing and therefore, it helps to establish a sound risk-based approach as regards ongoing supervision at micro and macro level, for example by allowing a monitoring of concentration risks. It can also assist supervisors to better plan their activities, such as on-site inspections and to prioritise their engagement with relevant service providers. Finally, such repository would also be useful in identifying an unduly degree of outsourcing resulting in empty shells. Keeping the aforementioned in mind, the peer review assessed whether NSAs have:

- a holistic picture of the CIF outsourced by undertakings (i.e. if there is a repository enabling understanding which undertakings have outsourced, for example their claims management function);
- a holistic picture of the service providers to which undertakings have outsourced their CIF (i.e., if there is a repository of information which enables the supervisor to understand how many undertakings have outsourced a specific CIF to a given service provider);
- an overview of the level of outsourcing by a given undertaking without the need to integrate such information through a (complex) manual intervention.

As also summarised in table 14 below, the overall picture depicted by the peer review is that there is no homogenous approach undertaken by the various NSAs at EEA level regarding documentation and information.

TABLE 14 – REGISTER OF OUTSOURCING (NSA)

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IS	IT	LI	LT	LU	LV	MT	NL	NO	PL	PT	RO	SE	SI	SK
Register of CIF per UT	X	X	X	KF	X	KF	NO	NO	X	X	NO	X	X	X	NO	X	KF	X	X	NO	X	X	NO	NO	X	X	NO	NO	X	X
Register of service providers providing at least CIF	X	X	X	NO	X	NO	NO	NO	X	NO	NO	X	X	X	NO	NO	NO	X	X	NO	NO	X	NO	NO	NO	X	NO	NO	NO	X
Holistic picture	X	X	X	NO	X	NO	NO	X	X	X	NO	X	X	NO	NO	X	NO	X	X	NO	X	X	NO	NO	X	X	X	X	X	X

⁴⁰ It is noted that CAA (LU) has developed in 2013 a register of information on Professionnels du secteur de l'assurance (PSA) which as reported are service providers directly supervised by the CAA. Furthermore, the CAA is currently implementing a holistic register on outsourcing arrangements.

Overall, as mentioned above, there is an asymmetry among NSAs as regards their approach on the existence of an updated repository of information on outsourcing.

- 18 NSAs (21, if counting those having a register of information on KF only) showed evidence of having some form of register of CIF per undertaking.
- Among them, 12 NSAs have a register of information on the service providers enabling an extraction of information useful for supervisory purposes.
- In most of the cases, the solutions adopted by the NSAs to keep those inventory up to date are feed-in by supervisors and on a best effort basis.

Among the 20 NSAs having a holistic picture of the CIF outsourced by undertakings, 12 NSAs (AT, BE, BG, CZ, EL, FR⁴¹, HR, LI, LT, MT, PT, SK) can easily draw a holistic picture of the service providers providing CIF. The remaining 8 NSAs (EE, ES, IS, LV, PL, RO, SE, SI) have either automatic tools or information management processes giving as results an holistic picture of the type of outsourced functions in their respective supervised markets.

In relation to those marked as not having a up to date holistic picture of the overall outsourcing in the market, it is worth to highlight:

- Some NSAs, namely FIN-FSA (FI), CBI (IE), CAA (LU), DNB (NL), have conducted detailed thematic reviews on outsourcing from which they have gathered an holistic picture in that moment in time. However, they are not supported by structured register of information helping them in producing an updated overview of the situation of outsourcing in their market. Furthermore, it is also to be noted that the knowledge of the use of outsourcing is kept at the level of the supervisory teams in charge of the supervision of individual undertakings.
- Other NSAs, namely ICSS (CY), BaFin (DE) and IVASS (IT), have developed a register of outsourcing in case of key functions enabling a monitoring of the market. In relation to the overall outsourcing, it is noted that the knowledge of the use of outsourcing by individual undertakings is kept at the level of the supervisory teams in charge of their supervision.
- Lastly, FTNET (DK), MNB (HU) and Finanstylnet (NO), although applying different specific processes and procedures to store the information relating to the outsourced functions, have limitations in assessing the service providers or outsourced functions on aggregate level, and subsequently cannot have the full view of the aggregated numbers without substantial manual work. In light of this, it is difficult for them to have a holistic picture of outsourcing in their markets. Similarly to the NSAs reported in the two points above, it is

⁴¹ In relation to FR, ACPR has developed an internal register covering only the outsourced functions after the entrance into force of Solvency II (01.01.2016).

noted that the knowledge of the use of outsourcing is kept at the level of the supervisory teams in charge of the supervision of individual undertakings.

Among the NSAs reported above, several, namely BaFin (DE), FIN-FSA (FI), MNB (HU), CBI (IE), IVASS (IT), CAA (LU), DNB (NL) and AZN (SI) have already started projects to improve the quality of their information systems associated to outsourcing.

INDIVIDUAL RECOMMENDED ACTIONS ADDRESSING THE DOCUMENTATION AND INFORMATION MANAGEMENT

Recommended actions were issued to NSAs where evidence of having some form of register of CIF per undertaking was not found during the reference period of the peer review. When deciding on which NSAs should receive a recommended action, the PRC also took into account the size of the market *vis a vis* the cost/ improvement of supervisory efficiency by the tool, which should, therefore, reflect the complexity or volume of data on outsourcing. The following NSAs received a specific recommended action to implement or improve the tool in use: **ICCS-CY, BaFin-DE, FTNET-DK, FIN-FSA-FI, MNB-HU, CBI-IE, IVASS-IT, DNB-NL, Finanstylnet-NO.**

In addition, a recommended action was issued where an existing data base or register did not include all the outsourcing arrangements still in force: **ACPR-FR**

For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

2.6. ON-GOING SUPERVISION OF OUTSOURCING

One of the key objectives of ongoing supervision of outsourcing performed by NSAs is to ensure that undertakings remain fully responsible when they outsource critical or important functions or activities and that Solvency II is complied with in relation to them. This includes for example supervision of outsourcing as part of off-site supervision, on-site supervision at the undertaking premises and on-site supervision at the premises of the service provider.

As mentioned before, there is an increasing level of attention and supervisory focus by NSAs in relation to outsourcing. This important area of the Solvency II framework is being upgraded by a

number of NSAs who are improving their national frameworks to supervise outsourcing in terms of rules and guidance for the market participants, public statements of the NSAs to raise the attention of the market, and in terms of enhancement of the tools at disposal of the supervisors to carry out this supervision (e.g. databases, review of internal procedures, thematic reviews, etc.)

As part of the ongoing supervision of outsourcing, the peer review focused on understanding the practices carried out by NSAs as part of their off-site and on-site supervisory activities with a review of the different type of supervisory measures used by supervisors. Furthermore, given their relative importance in the EEA, the peer review performed a deep dive on the supervisory practices in the following three scenarios: (i) supervision of intra-group outsourcing; (ii) supervision of outsourcing of delegated authority to underwrite and settle claims. As explained before in section 2.3 above, the supervisory review of the notifications focuses on typically on the review of (i) the risk assessment on critical or important functions outsourced; (ii) the due diligence on the service provider; (iii) the review of the contractual arrangement and in few cases of (iv) the monitoring system of the service provider's performance and (v) the internal control system of the undertakings.

As part of their ongoing supervision of outsourcing, NSAs review the outsourcing framework of the undertakings including for example the outsourcing policy, the points reported above typically assessed at notification, the criteria used by undertakings to classify a function/activity as critical or important and the overall governance and control architecture put in place by undertakings to steer the outsourcing relationship from the decision making process, to the ongoing monitoring and the exit strategy. These supervisory activities are performed both off-site and on-site. However, the core part of outsourcing supervision is carried out through on-site inspections at undertakings and/or the service providers' premises by the majority of NSAs.

2.6.1. OFF-SITE SUPERVISION

Off-site supervision, consisting mostly on desk reviews of documentation and reports produced by the undertakings, their auditors and/or service providers, requires less planning than on-site supervision and can be used by the supervisors to: (i) identify risks, trends of outsourcing; (ii) review documentation associated to the ongoing outsourcing arrangements of the undertakings; and (iii) produce evidence for the need to launch tailored on-site inspections at the undertaking or the service provider premises or thematic market analysis.

The PRC assessed the off-site supervisory practices of the NSAs in relation to outsourcing applying the following criteria:

- whether the NSA has developed an internal procedure to supervise outsourcing off-site;
- as most important criteria, the actual supervisory practices of outsourcing supervision off-site (i.e. review of supervisory reporting, undertakings policies and procedures, specific reporting, KPIs and/or KRIs relating to the function outsourced and engagement of the undertakings through specific questions or meetings ad hoc);
- how the outcomes of the off-site assessment are used to inform and prioritise on-site activities.

The majority of NSAs do not perform a specific set of off-site supervisory activities dedicated to outsourcing, but have embedded them in the activities associated to their review of supervisory reporting (i.e. RSR, ORSA, SFCR) and to their review of system of governance. In relation to the criteria described above, the EEA authorities can be segmented in the following three groups:

- Tailored approach to supervision of outsourcing off-site (e.g. AT, BE, CZ, IE, MT). These NSAs, with exception of BE, have developed a dedicated handbook to guide off-site supervision of outsourcing: the supervisors employed by those authorities, in addition to review the Solvency II supervisory reporting, in case of particularly arrangements covering particularly risky or business critical functions or activities, require undertakings to report on the performance of the service providers through KPIs and KRIs. For example, to monitor outsourcing of delegated authorities to MGAs, MFSA (MT) has developed a specific quantitative reporting template used to check the volume of business allocated to each MGA by undertakings. Other NSAs require undertakings to report on an ongoing basis the list of their outsourced CIF and functions/activities. On a risk based approach, these NSAs perform off-site review of outsourcing policies and procedures of the undertakings including the criteria to classify a function or activity as CIF, the AMSB meeting minutes when specific outsourcing is discussed. Finally, the off-site review performed by the authorities belonging to this group inform the yearly planning of the supervisory activities of the NSA

either through a set of specific actions related to outsourcing or as part of the overall supervisory planning. It is worth to mention that when guidance for supervisors for ongoing off-site supervision of outsourcing is not developed there is a risk of having a non-homogeneous approach applied through the authority.

- Off-site outsourcing supervision embedded in the system of governance module (DE, EL, FR, HR, IS, IT, LI, LV, PT). Also in this case, the NSA belonging to this group have developed internal guidance for supervisors, but at a different level of details. Typically those authorities leave more freedom to the supervisors on how to tailor their off-site supervisory review. Other authorities focus their ongoing supervisory review of outsourcing mostly through on-site inspections with a limited level of off-site engagement with undertakings (e.g. BG, CY⁴², ES, EE, FI, HU, PL and RO).

The authorities belonging to this group, with the exception of BaFin (DE) and HANFA (HR), have not defined detailed internal procedures and practices to supervise outsourcing off-site. The impacts of the latter are different considering the size and complexity of the NSA and the market it supervises. For example, in case of BaFin (DE) the definition of more granular off-site supervisory guidance may help in applying a more homogeneous approach on outsourcing supervision given the complexity of the market and of the authority. In other cases (e.g. BG, CY, EL, ES, FI, HU, LI, NO⁴³, PL, RO, SK)⁴⁴ the definition of such procedures will help the authority in gaining efficiency and in improving the quality of off-site supervision.

Furthermore, several NSAs leverage on the role of the internal audit function of the undertakings, perform a thorough review of the internal audit activities relating to outsourcing. The supervisors analyses the internal audit report containing an overview of internal audits inspections performed during the reporting period, with a summary of the material findings and recommendations reported to the AMSB. Furthermore, NSAs engage with regular meetings with the internal audit function of the undertakings.

Another activity performed by several NSAs off-site relates to the review of the undertaking's Business Continuity Plan to ensure that the undertaking is adequately taking into consideration outsourcing arrangements as well as whether the undertaking will be able to continue carrying out the services currently provided by the service provider and/or whether the undertaking will be able

⁴² It is noted that ICCS (CY) has established an on-going dialogue with the Cypriot Audit Oversight Board, which is the overarching body of audit services in CY. ICCS uses such dialogue to inform its oversight activities on outsourced internal audit functions and of audit services.

⁴³ It is noted that, as part of off-site supervision, Finanstilsynet (NO) conducts ad hoc document-based surveys on outsourcing, following a risk-based approach.

⁴⁴ It is noted that, after the reference period of this peer review (i.e. in 2021 and 2022), BoG (EL), FIN-FSA (FI), MNB (HU), and ASF (RO) have undertaken a series of improvements to update their internal processes to guide outsourcing supervision, including off-site.

to continue servicing the policy holders that are currently being served by the service provider and/or whether it is able to engage with another service provider within a short period of time to ensure limited interruption of CIF.

INDIVIDUAL RECOMMENDED ACTIONS ADDRESSING OFF-SITE SUPERVISION

Recommended actions were issued to NSAs which were not able to provide enough evidence of sound ongoing off-site supervisory practices or of having an homogeneous approach applied through the authority: **NBB-BE, ICCS-CY, BaFin-DE, EFSA-EE, BoG-EL, DGSFP-ES, FIN-FSA-FI, HANFA-HR, MNB-HU, FMA-LI, Finanstylnet-NO, KNF-PL, ASF-RO, and NBS-SK.**

For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

2.6.2. ON-SITE SUPERVISION

As described in the introductory paragraph relating to ongoing supervision, the most comprehensive way used by NSAs to supervise the outsourcing framework and the risks stemming from specific outsourcing arrangements of undertakings is to carry out an on-site inspection at the undertaking or the service provider premises, as foreseen by Article 38 of Solvency II Directive Directive.

The PRC assessed the on-site supervisory practices of the NSAs in relation to outsourcing applying the following criteria:

- the actual supervisory practices of outsourcing supervision on-site including the overall review of the outsourcing framework of the undertakings (*e.g.* policies, procedures and overall governance around outsourcing including: (i) assessment of classification of CIF and of the governance on the outsourcing thereof; (ii) the internal control system of the insurance undertaking to cope with the outsourcing arrangements; (iii) whether a proper risk assessment of the outsourcing and due diligence of the service provider was made; (iv) review of outsourcing contracts; (v) confirmation that the execution of such outsourcing arrangements is being monitored by the insurance undertaking);

- the approach undertaken by NSAs in relation to on-site inspections relating to outsourcing at the premises of undertakings (i.e. as part of holistic inspections on system of governance, or tailored outsourcing inspections);
- whether NSAs have performed inspections at the premises of the service providers, including where applicable the cases of horizontal market assessments of specific service providers;
- whether the NSAs have applied specific supervisory measures to the undertaking after the ongoing supervisory review (since ongoing supervisory measures are typically applied after on-site engagements, it has been considered as criteria here); and
- whether the NSA has developed an internal procedure to supervise outsourcing on-site.

In relation to the development of dedicated procedures to guide outsourcing on-site supervision, the EEA picture, similarly to other areas of the outsourcing framework, is not homogeneous. Several NSAs have developed checklists, methodological documentation and questions to be used during the inspections with different level of completeness and detail. In this case, it is worth to notice that the NSAs supervising the smallest markets where typically outsourcing is supervised as part of the overall system of governance, did not develop specific manuals to guide the supervisory actions on-site. These authorities have a detailed overview of their markets and normally have introduced cycles of comprehensive inspections at the premises of undertakings including also outsourcing. Among the authorities supervising the biggest and/or more complex markets, it is worth to mention the practices of NBB (BE) which has developed a very detailed set of principle based checklists guiding the supervisors in their on-site reviews. Another interesting example is represented by ACPR (FR) which has developed a supervisory approach, based on common principles may be preferable to achieve supervisory goals, as it helps to adopt supervisory actions which are tailored to each situation and more risk-based (however, this approach does not seem to be wholly or partly specific to outsourcing).

All in all, the PRC has generally identified that the on-site initiatives on outsourcing are time and effort intensive activities, which therefore need to be carefully planned by the NSAs considering the level of outsourcing of the undertakings and its impact on their risk profile. Furthermore, to increase the effectiveness of on-site inspections on outsourcing and to provide supervisors with a structured approach to challenge undertakings and service providers, it is important to develop guidance to the supervisors in their on-site assessments of outsourcing. It could, for example:

- Improve the efficiency of the supervisory process;
- Increase the likelihood that the supervisors will engage with the undertakings/service providers focusing on the areas carrying more risks;

- Simplify the compliance review of the standard documentation (*e.g.* written agreement; outsourcing policy; audit reports;etc.) giving more time for supervisors to focus on the most risky areas when doing an on-site inspection;
- Facilitate the transfer of knowledge on the different risks and on specific type of service providers which the NSA needs to consider when supervising outsourcing in a given market.

The lack of development of such procedures could result in a less structured approach to the supervision of outsourcing, which might have impacts on: (i) the effective allocation of resources to on-site activities on outsourcing; (ii) the quality of the supervisory activities and on their capacity to provide proper risk detection and prevention; and (iii) the credibility of the supervisors when dealing on-site with the undertakings and service providers undermining the results of the supervisory activities in this area.

In relation to the actual supervisory practices to assess outsourcing on-site, the PRC identified that the engagement with undertakings on outsourcing on-site supervision of outsourcing does not seem to be part of the outsourcing supervisory approach by NSAs. Typically, NSAs review the outsourcing framework of undertakings when they engage with them during the overall review of system of governance. In addition to those type of engagements, some NSAs perform, with different level of intensity, dedicated on-site inspections on specific outsourced operational functions or activities, in case these are particularly critical to the operations of the undertakings (*e.g.* claims management, key functions, ICT, back-office, etc.). Another relevant aspect assessed is whether the NSAs have performed a limited number of on-site activities engaging with the service provider (only these NSAs carried out this: BE, CZ, DE, FR, HR, IT, LU⁴⁵, MT and NO). In several cases, those inspections were mostly focused on intra-group providers (from the perspective of the undertakings making use of them) and covered ICT functions.

Another area of focus is the engagement off-site through dialogue with service providers with the objective to perform horizontal analysis of the contractual arrangements, the operational structure and the type of services (including their quality through analysis of specific reports) performed by service providers. Those assessments have been performed, for example in case of outsourcing of actuarial, accounting, key functions and ICT outsourcing.

The following paragraphs cover respectively the specific type of controls performed typically by NSAs on-site and the supervisory measures taken by NSAs as part of ongoing supervision.

⁴⁵ Limited to the Professionnels du secteur de l'assurance (PSA) which as reported are service providers directly supervised by the CAA.

2.6.2.1. Supervisory review of the classification of critical or important functions or activities

As described above, one of the possible type of controls performed by NSAs on-site relates to the review of the process defined and applied by undertakings to qualify or not a function or activity as critical or important. This activity is performed by all NSAs with different level of focus and approaches. The most frequent outcomes of these reviews are a new classification of a function or activity previously classified as non-CIF to CIF and the request to the undertakings to update their internal procedures considering the NSAs recommendations.

2.6.2.2. Supervisory review of undertaking's internal controls to oversee the outsourced function or activity

Following the requirements stipulated in the Solvency II Directive and Delegated Regulation, undertakings include the continuous monitoring of their outsourcing arrangements within their risk management and internal control systems. NSAs can verify whether outsourcing arrangements are kept under control to a sufficient extent by undertakings only through on-site audits. It is important that those audits cover not only the outsourced function as stand-alone functions but also how it fits in the undertaking strategy.

The typical assessment performed on-site relates to the operational review on how the control mechanisms included in the arrangements work in practice.

- In order to do so, NSAs conduct interviews with the persons responsible for the specific outsourcing arrangements, if any. During these interviews and on-site engagements, the NSAs examine the level of formalisation of their duties and responsibilities, which must be proportionate to the outsourced activities. Attention must be paid by NSAs when the activity to control the outsourcing is performed by another third party and not by the undertaking.
- Other tools used relate to discussions with AMSB, review of internal audit reports, asking directly whether there are any problems with outsourcing and if there needs to be a discussion with external auditors (the areas typically assessed are: conflict of interests, fitness and property controls, AML, resource adequacy on outsourced tasks and the skills and resources retained by the undertaking to perform the controls).
- Another type of check performed both on-site, off-site and at notification, relate to the review of the outsourcing arrangement to verify the presence of the mandatory contractual elements. Typically, NSAs review meeting minutes of the AMSB where the decision to outsource is taken.

- Furthermore, NSAs investigate the procedures of the outsourced activity retained by undertakings, and whether the human and/or material resources and capacity of the undertakings are sufficient to execute these part-activities and fulfill an appropriate control about the outsourced activities.
- On the basis of the outcome of the supervisory review of the controls performed by the insurance undertaking on service provider's activities, NSAs check the risk management and internal control systems of the service provider, through assessment of documentation and in limited cases through on-site inspections at the service provider premises⁴⁶
- For example, ICT agreements may include "automatic" controls within the service itself (*e.g.* monitoring tools, KPIs, reporting, segregation of duties, user and access management, etc.), the supervisors in these cases assess how those controls have been implemented and how they are monitored. Another example of NSAs controls related to ICT outsourcing relates to the assessment of how the follow-up and evolution of outsourced activities is discussed between the service provider and the undertaking including the management of anomalies and relating remediation plans. Another area assessed during on-site relates to information security and operations. NSAs review insurance undertaking's security policy, and check whether there are established information requirements for security of outsourced ICT functions and how this aligns with the undertaking's ICT security policies. Controls include how third-party outsourcing is regulated in contracts, the quality of access rights administration (both for regular users and privileged users), patch management, continuity and crisis management, incident reporting etc.
- Another example relates to outsourcing of investment, a typical on-site check relates on how the contractual information is operationally executed (*e.g.* presence of committees, frequency of contacts, use of data, operational and control processes, etc.) and how the decisions are taken (*e.g.* review of decisions made by undertaking's investment committee and/or the AMSB on the basis of investment proposals made by the service provider)

⁴⁶ Examples of triggers used by NSAs to launch onsite at service providers are: (i) lack of ability of the insurer's top management in explaining and/or justify key decisions made by service providers (*e.g.* in case of actuarial services in relation to provisioning/modelling assumptions used); (ii) poor reporting framework between service provider and undertaking (*e.g.* lack of documentation, low frequency of meetings, too generic KPIs, etc.); (iii) lack of internal governance and clarity of roles between service provider and undertaking. For example, overlaps and redundancies in the control activities on the outsourced activities (*e.g.* when carried out by several functions in a uncoordinated manner), incomplete monitoring of the contractual SLAs; excessive workload for the person responsible for controls.

- In the case of undertakings which outsource the claims handling/management process, NSAs use the number of complaints as indicator to inform the on-site activities. It is also taken into account to decide whether to engage with service providers.

2.6.2.3. Challenges experienced by supervisors in ongoing outsourcing supervision

Typical challenges experienced by NSAs in ongoing supervision of outsourcing arrangements relate to:

- In general, a high level of expertise is required in technically oriented areas such as ICT, complex products or niche businesses. Complex structures, internationalisation and numerous subcontractors make it difficult to find the right granularity of supervision. Furthermore, the variety of outsourced services and the volume and complexity of the wordings of the outsourcing contracts are factors that complicate the supervision and the establishment of internal procedures by NSAs.
- the supervision of the post-contractual obligations and especially the monitoring obligation. In this area the most material challenges relate to: (i) assessment of the activities performed by the outsourcing manager⁴⁷ (if any) particularly when no fit and proper assessment is performed (ii) assessment of the appropriateness of KPIs defined by undertakings and service providers; (iii) weak legal grip for NSAs on the service providers to require them to change something when a problem has been identified.
- An operational challenge is the assessment of the quality of the provider's services. Depending on the materiality of the outsourcing, some NSAs implement a cooperative approach by engaging with the service provider already at notification stage.
- Lack of supervisory reporting/data from undertakings in relation to the outsourced function and on the activities performed by the service providers both ongoing and at notification, including in certain cases incomplete or delayed notifications⁴⁸.
- In case supervisory authorities carry out inspections at the service providers, there might be logistic issues faced by NSAs in case the service provider is located in different countries or makes use extensively of suboutsourcing.

⁴⁷ The individual nominated within the undertaking responsible to oversee the outsourced function.

⁴⁸ In relation to this point it is also worth to be noted that additional reporting would necessarily require, in addition to an impact on undertakings, an increased need of resources so that supervisors would be able to assess them.

2.6.2.4. Supervisory measures

In relation to the supervisory measures applied post-notification (i.e. ongoing supervisory measures), the focus on NSAs, at least in terms of measures applied, is on the correctness of the outsourcing arrangements (requesting undertakings to review contracts), in limited instances to change the service providers, to implement stronger internal controls and to apply fines. To some extent, the majority of NSAs applied some kind of supervisory measure, but not on a regular basis. From this it can be inferred that supervisory dialogue is the supervisory tool mostly used by NSAs to influence practices by (re)insurance undertakings. No supervisory measures have been applied by BG.

Type of supervisory measure	NSA making use (at least once) of the supervisory measure
Request to change contract	CY, DE, FI, FR, HU, IE, IS, IT, LU, LV, MT, NL, NO, RO, SE and SI
Request to change service provider	DK, ES, IE, MT and RO
Request to withdraw contracts	FR, MT, NL and NO
Fines or other sanctions	AT, HU, IE, LI, LU, MT and NL
Sub-outsourcer assessment	AT, BE, ES, IS, NO and SE
Other	BE, DK, FI, FR, HR, HU, IT, LI, MT, NL and SI

With reference to the measures marked as “other” it is important to notice that most of the supervisory actions performed by NSAs relate to:

- ▶ request to review and update contracts (mostly relating to arrangements finalised before the entrance into force of Solvency II) which, in some cases, did not comply with Solvency II provisions (BE, FR);
- ▶ request to perform once again the risk assessment or the classification as CIF (HU);
- ▶ request to implement additional controls/monitoring system on outsourcing and/or review the internal policies and documentation (DK, FI, FR, HU);
- ▶ request to the undertaking to set up an outsourcing compliance committee (LI); and
- ▶ supervisory intervention in a takeover of the service provider (NL).

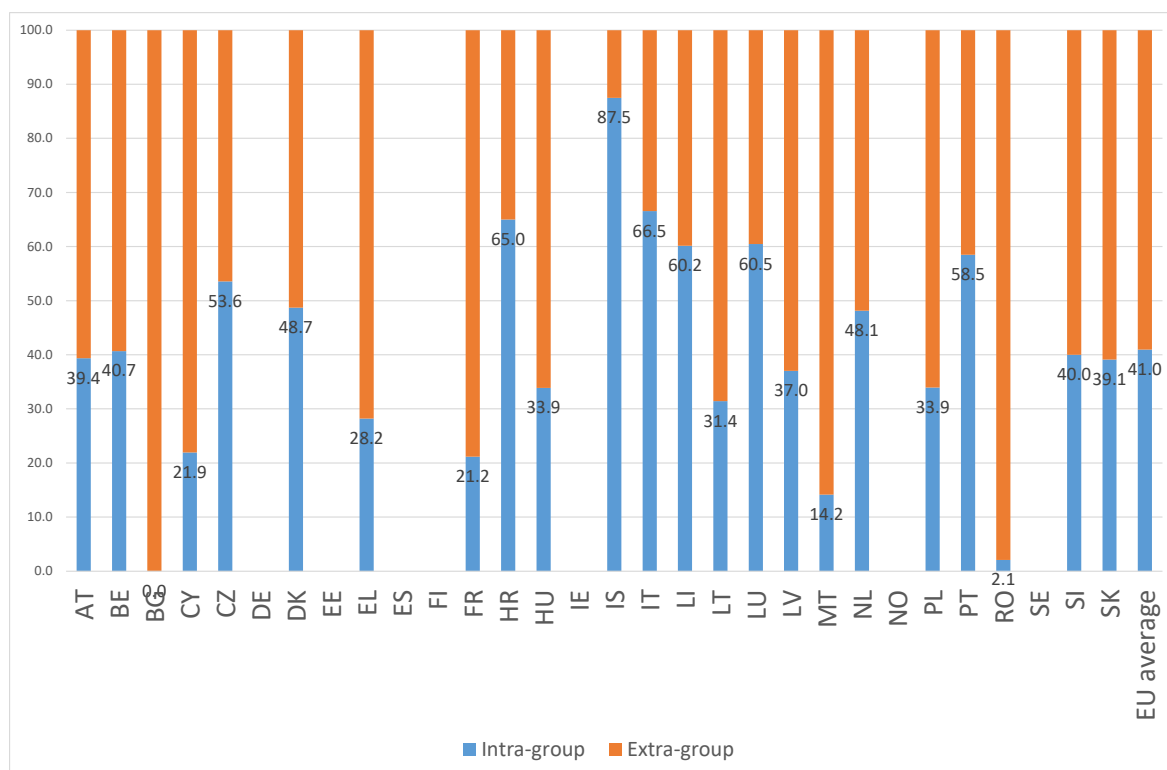
INDIVIDUAL RECOMMENDED ACTIONS ADDRESSING ON-SITE SUPERVISION

Recommended actions were issued to NSAs where outsourcing on-site supervision does not seem to be part of the outsourcing supervisory approach by NSAs, there were limited on-site activities concerning outsourcing or the NSA can benefit from harmonisation on on-site activities and in case of more complex markets: **ICCS-CY; FIN-FSA- FI; ACPR-FR; ASF-PT; and ASF-RO**. For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

2.6.3. SUPERVISION OF INTRA-GROUP OUTSOURCING

EEA undertakings make extensive use of intra-group service providers (more than 40% of critical or important functions outsourced in the EEA are outsourced intra-group⁴⁹). The chart below provides an overview of the split between CIF outsourced to intra-group service providers (orange bar in the chart) and extra-group (i.e. when the outsourcing undertaking doesn't belong to any group, when the service provider is not part of the group and in case the NSA doesn't have available data).

CHART 4 – PERCENTAGE OF INTRA-GROUP OUTSOURCING PER EEA MEMBER STATE



From a supervisory perspective, intragroup outsourcing is to be supervised from two distinct and complementary perspective:

- (i) from the perspective of the NSA supervising a subsidiary outsourcing to another entity of the same group (solo undertaking perspective); and
- (ii) from the perspective of a NSA supervising the group (i.e. the group supervisor), where shared service providers are used (group perspective).

⁴⁹ The same disclaimer as described in paragraph 2.1.1.1 applies.

In relation to the first perspective, the peer review considered whether and how the NSA is able to ascertain the extent of control held by the undertaking on its intra-group service providers and ability to influence their action. While in relation to the second one, the PRC assessed whether the group supervisor monitors (following a risk-based approach) the intra-group service providers from a holistic perspective to avoid any occasion where they might become a single point of failure for the group itself taking into account the materiality of the operational risk that they pose to the group.

2.6.3.1. Intra-group outsourcing from solo perspective

As reported above and at paragraph 2.1.7.2, in case of outsourcing of a CIF, where the undertaking and the service provider are members of the same group, article 274(2) of the Delegated Regulation requires the undertaking to take into account the extent to which the undertaking controls the service provider or has the ability to influence its actions.

In other words, without having in place a robust system of control of their intra-group service providers, undertakings might face the risk of having their strategy, operations and costs structure driven by decisions taken by those service providers instead of their AMSBs. Furthermore, this might impair the ability of the NSA to monitor the compliance of such undertakings with their obligations and undermine the services those undertakings provide to policyholders and generate additional operational risks and/or impacts to Profit and Loss in case the services and their costs are not kept under control by the undertakings.

In light of the above, the PRC assessed whether NSAs were able to ascertain the extent of control held by the undertaking on the different service providers and ability to influence its action, including challenging the independence of the undertaking's AMSB in monitoring the outsourcing of CIF and, therefore, the compliance with the criteria set out in Article 274 of the Delegated Regulation.

The process to be followed by insurance undertakings at notification of intragroup outsourcing is the same one for extra-group outsourcing. This means that undertakings need to provide the same level of information to their NSAs regardless if the service provider is part of the same group⁵⁰.

If the process to submit the notification is the same as for extra-group outsourcing, the supervisory review of the notification in case of intra-group outsourcing of several NSAs (*e.g.* AT, BE, CZ, DE, FR, IT, LI, MT, NL, PL, SI) takes into account the fact that the service provider is member of the same group, applying proportionality and verifying that the undertaking has sufficient control and can

⁵⁰ In relation to the observation period, the only difference is represented by Italy, where undertakings outsourcing to intra-group service providers have a dedicated notification process. See paragraph 2.2.1.1 for further details.

influence the actions of the service provider. The typical points of attention, specific to intragroup outsourcing, reviewed by supervisors can be summarised in the following points:

- the presence of a written agreement as per Article 274(3)(c) of Solvency II Delegated Regulation developed at market standard;
- identification and management of conflict of interests between the outsourcing undertaking and the intra-group service provider including the respect of the “arm’s length principle”, *i.e.* the remuneration for a service rendered should be limited to the amount which a proper and conscientious manager would agree with a non-linked service provider⁵¹;
- existence of clear distribution of tasks between the intragroup service provider and the undertaking;
- that the service provider has adequate financial resources to carry out the services;
- the presence of mechanisms to safeguard the interests of the undertaking (*e.g.* independent directors in the management body of the service provider, effective key control functions, business continuity plan, etc.);
- the presence of structured reporting channels both for the ongoing activities and of the major changes affecting the services to enable the outsourcing undertaking to require evolutions to take into account, when needed, its specificities.

Almost all authorities (*e.g.* AT, CZ, DK, ES, IS, NL, NO) recognised that, similarly for outsourcing to service providers not part of the same group of the undertaking, the most efficient tool to supervise the requirements stemming from Article 274(2) is performing an on-site inspection at the premises of the undertaking typically involving the service providers⁵². For some authorities (*e.g.* DK, ES, HU) on-site inspection is the most common supervisory tool used for this purpose.

⁵¹ In this context, it is worth to mention the practices of the NSAs which follow. BaFin (DE) which considers that the undertaking, in determining the price to be agreed with the intra-group service provider, shall be guided by the market price for comparable services. Third-party providers can also be consulted for this purpose. Depending on the specific situation, the “cost surcharge method” or the “cost levy procedure” can also be applied if this appears to be comprehensible. It should also be borne in mind that, in the event of a service reference, the remuneration must not exceed in the long term the costs that the decommissioning insurance undertakings would have if it were to provide the service itself. ACPR (FR) the practice of reviewing the cost allocation of outsourcing arrangements intragroup was in place already before the entrance into force of Solvency II. For example, areas of attention during the ACPR reviews are: (i) in case a non-life undertaking outsources activities to a life undertaking within the same group, the mechanisms to charge the costs to the non-life undertaking are reflecting the services provided and are not higher with impacts on the policyholders benefits in case of insurance with profit sharing mechanisms; (ii) in case of ICT outsourcing, the mechanisms to charge the costs of services. In certain cases, costs have been shared within the group not taking into account the entities effectively making use of the services provided. IVASS (IT) which, differently from other authorities, considers the compliance with the cost-effectiveness criteria is assumed in case of intra-group outsourcing.

⁵² Examples of on-site controls relating to Article 274(2) Solvency II Delegated Regulation are: (i) DGSFP (ES) through a cross-assessment of the internal policies of two undertakings making use of the same intra-group service provider, the DGSFP noticed that these procedures were identical and therefore that triggered a more granular assessment to understand how the internal control system was

Several NSAs (e.g. BE, CZ, EE, LU, MT, PL, RO) engage specifically on outsourcing with the group supervisor if there are issues at notification or during the ongoing supervision of the arrangement. Typically those engagements happen in the context of the college of supervisors.

Some NSAs (BG, CY, FI, LV, PT, RO) do not have a well established practice to supervise the requirements of article 274(2) of the Delegated Regulation, or intra-group outsourcing as such.

Challenges for the supervisory authorities in supervision of intra-group outsourcing from the perspective of the solo undertakings are represented by: (i) the complexity to assess and challenge the cost allocation system of the outsourcing arrangement given the lack of benchmarks; (ii) the provision of personnel as form of outsourcing (i.e. the case when an employee of an entity of the group works for multiple entities).

In relation to the latter point (point ii), it is worth to highlight the paper "[Guidance on the Use of Service Companies for Staffing Purposes in the Insurance Sector](#)" issued by the CBI (IE) in January 2022 and available for consultation during the reference period of this peer review.

INDIVIDUAL RECOMMENDED ACTIONS ADDRESSING THE SUPERVISION OF INTRA-GROUP OUTSOURCING

Recommended actions were issued to the NSAs having observed intragroup outsourcing in the reference period and without a well established practice to supervise the requirements of article 274(2) of the Delegated Regulation, or intra-group outsourcing as such: **ICCS-CY; FIN-FSA- FI; FCMC-LV; ASF-PT; and ASF-RO**. For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

2.6.3.2. Intra-group outsourcing from group perspective

As regards the second perspective (group), it is noted that in several instances, the development of intra-group shared service providers is part of the operational strategy of groups and financial conglomerates. Often, the size and the importance of these shared service providers in the group operations are very significant. Many operational processes cannot be executed without the service

adopted to manage the specific characteristics of the outsourcing undertakings; (ii) Finanstilsynet (NO) off-site noticed that the figures relating to their SCR provided by an undertaking presented anomalies. After having engaged with the undertaking and its service provider of accounting and actuarial services, Finanstilsynet understood material mistakes performed by the latter in the computation. Finanstilsynet (NO) started a dialogue with the undertaking aiming at solving the anomaly which then was solved without termination of the contract.

providers being operational and their failure or a disruptive event affecting one of their processes (not necessarily those related to the services they provide to the group undertakings) might generate serious issues from perspective of the company and the subsidiaries. The above is valid both in a going concern and in case of recovery/resolution of the undertaking. It is therefore important that the group supervisor builds and shares with the NSAs supervising the group's subsidiaries a deep understanding, from a holistic point of view, of the operations of those providers through the execution of both off-site and on-site supervisory activities.

Considering the materiality of intragroup outsourcing, the PRC considered the practices of the NSAs which are group supervisors of material cross-border groups (*e.g.* AT, BE, DE, ES, FI, FR, IT, NL) and identified this area as one that should continue to be high on NSAs agendas.

The peer review highlighted also that College of Supervisors are the primary tools used by supervisory authorities to ensure that the information is shared from the group supervisor to the supervisors of the Solo NSAs.

2.6.4. SUPERVISION OF OUTSOURCING OF DELEGATED AUTHORITY TO UNDERWRITE AND SETTLE CLAIMS

In case an undertaking delegates to an intermediary/service provider the authority to underwrite insurance contracts and/or settle claims on their behalf (which according to EIOPA Guideline 61 of EIOPA System of Governance Guidelines is outsourcing), the proper supervision of such outsourcing arrangement should be one of the focus of the NSA supervising said undertaking.

As reported at paragraph **Error! Reference source not found.**, the practice to grant delegated authority to service providers/intermediaries is more relevant in certain EEA member states than in others. Furthermore, it is noted that several, but not all, undertakings using this type of outsourcing are operating on a cross-border scale and use this outsourcing model to ease their access other EEA markets. In certain EEA Member States, these activities (underwrite and settle claims) may be outsourced to service providers, commonly known as Managing General Agents (MGAs).

The practice of outsourcing of delegated authority to underwrite and settle claims is a significant part of the business model of undertakings established in at least 13 member states (AT, BE, CY, DE, DK, FR, HU, IE, LI, LU⁵³, MT, NL, SE). This means that some of the undertakings established in the

⁵³ In Luxembourg the legislative framework does not foresee the MGA status, it only foresees 2 types of intermediaries (agents and brokers). It is however possible for undertakings to delegate authority to underwrite and settle claims on their behalf and on their account to MGAs operating outside the Luxembourgish territory. In light of the latter, it is worth to mention that CAA, at notification,

above member states have delegated the authority to underwrite and/or settle claims on their behalf to intermediaries operating in their home member state and/or in another member state of the EEA (to follow “home NSA perspective”).

Furthermore, the peer review highlighted some jurisdictions where the practice of outsourcing delegated authority is not material, but where intermediaries (mostly MGAs) delegated by undertakings established in other EEA jurisdictions provide material insurance services to the public in that member state. Among those jurisdictions, it is worth to mention ES, IT⁵⁴, PT (to follow “host NSA perspective”).

Finally, the peer review identified some jurisdictions where this practice is not observed by the NSAs neither from the perspective of the home NSA nor from the one of the host NSA (*e.g.* BG, CZ, EE, EL, FI, HR, IS, LT, LV, NO, RO, SK). Several of these authorities showed a lack of familiarity with the concept of outsourcing of delegated authority, in general, and that of MGAs in particular.

Similarly for the other areas of the outsourcing supervisory framework, the peer review assessed the presence of supervisory practices. Some NSAs developed robust practices to supervise this type of outsourcing (BE, IE, MT, NL). It is worth to mention the following NSAs:

- BE – as reported already at paragraph **Error! Reference source not found.**, NBB considers intermediation as outsourcing and it considers outsourcing of delegated authority always as CIF and therefore to be notified to the NBB.

In terms of internal processes, a notification of outsourcing of delegated authority to underwrite and settle claims is considered by the NBB as a *ceteris paribus* riskier activity because it implies always storage of insurance documents outside the insurer head office (electronic or paper storage systems) which is according to the Belgian insurance code an activity requiring an NBB’s approval. Riskier activities, as reported at paragraph 2.3.1.1, are subject to an extensive review of the notification which is presented to the NBB Management Committee for obtaining a non-objection opinion to the outsourcing and a prior approval on the data storage system. In terms of ongoing supervision, NBB typically requires undertakings, on a proportional manner, to: (i) develop dashboards and monitoring tools to oversee the MGA commitments and activities; (ii) adopt audit plans on MGAs and (iii) perform specific reporting to the NBB.

verifies whether, in line with the reasoning set out in the “European Commission interpretative communication on Freedom to provide services and the general good in the insurance sector”, the use by LU undertakings of MGAs outside of LU falls within the scope of the rules applicable to the establishment of a branch.

⁵⁴ As reported in paragraph 2.1.2.1, according to IVASS Regulation 38/2018 Italian undertakings cannot outsource the underwriting activities.

The supervision of MGAs operating in Belgium is done by FSMA, while the supervision of the relationship with the undertakings is done by NBB. There is cooperation between the authorities. In case of non-Belgian MGAs (frequently from the UK), NBB cooperates with the NSAs of the risks and commitments underwritten by the MGAs on behalf of Belgian undertakings.

- IE – the approach of CBI to supervise outsourcing of delegated authority, in particular in case of MGAs, is very well structured. The authority has developed a fully fledged procedure to guide the assessment of the supervisors both at notification and during ongoing supervision indicating the major areas of risks and focus and the typical question a supervisor needs to ask when engaging with undertakings making use of this type of outsourcing.
- MT – notwithstanding the fact that the Maltese legislative framework does not have a specific framework relating to the appointment of MGAs, as reported at paragraph **Error! Reference source not found.** outsourcing of delegated authority is always considered outsourcing by the MFSA and therefore the undertakings must always apply outsourcing requirements when choosing this business model.

Given the high number of notifications received relating to this type of outsourcing (please, see paragraph 2.1.1.1 for further details), the MFSA has developed a very detailed and structured checklist to guide the supervisory review of the notification. As part of this approach, MFSA has developed a risk scoring system of the binder agreement. Also in terms of ongoing supervision, the approach developed by the MFSA is very structured and articulated. For example, MFSA develops risk indicators on the basis of the data collected from the Solvency II Quantitative Reporting Templates and the local supervisory reporting (ANST) and uses those indicators to identify the magnitude of both off-site and on-site supervision. The latter is performed both at undertaking's and more rarely at service provider's premises.

- NL - the distribution of insurance products through authorised agents (MGAs) qualifies as outsourcing. Considering that this type of outsourcing is mostly related to non-life business, to provide guidance to the market on its expectations, DNB has published a [Good Practice for outsourcing to authorised agents by non-life insurers](#), which details the procedure to be followed by undertakings when delegating authority to an authorized agent and the criteria to classify the outsourcing as CIF and therefore notify it to DNB. The procedure details the supervisory expectations of the DNB in relation to the areas to be considered by the undertakings to ensure compliance with Solvency II requirements (*e.g.* the elements to be included in the agreement between the intermediary and the undertaking).

In terms of supervisory approach, DNB considers the content of the good practice as a recommendation and apply therefore a “comply or explain approach”. It means that the expectation of the DNB is that the undertakings comply to it or are able to justify why they don’t comply.

As known, the Netherlands applies the same model of supervision applied in Belgium. The supervision of the intermediaries is done by AFM, while the supervision of the relationship between the intermediaries and the undertakings is performed by DNB. There is an intense cooperation between the authorities.

All in all, in terms of supervisory practices, the peer review highlighted that the key aspect of supervision of this type of outsourcing, particularly when it is material part of the business model of the undertaking, is to ensure that the risks arising from that business model are properly understood and monitored by the undertaking. The aspects that could be taken into account by NSAs while supervising this business model include:

1. To perform specific controls on the sustainability of the undertaking business model and on the reliability of the service provider, which include the performance on a risk and proportionate manner of:
 - a. a fitness and propriety assessment on the service providers as well as be informed of the business that will be generated through the engagement of these service providers;
 - b. an assessment on the undertaking’s key personnel to ensure that collectively they possess adequate experience and competence to challenge such business, especially in situations where an undertaking is leveraging on the experience of the service provider in relation to the type of product to be distributed;
 - c. the conflicts of interest and the interlinks between the undertaking and the service provider; and where such conflict of interest occurs, to formally engage with the undertakings in order to address them.
2. At notification, when the undertaking intends to make use of this type of outsourcing to perform cross-border activities in one or more EEA Member States, to verify whether, in line with the reasoning set out in the “European Commission interpretative communication on Freedom to provide services and the general good in the insurance sector” , said activity falls within the scope of the rules applicable to the establishment of a branch and, therefore, the undertaking must notify that type of outsourcing as if it was a branch.

3. When the undertaking makes use of this type of outsourcing to perform cross-border activities in one or more EEA Member States, to cooperate with the Host NSA to understand the practice of the service provider and be able to intervene when appropriate.
4. to set up a monitoring system of the business model of the undertaking making use of this type of outsourcing. Part of this monitoring system should be the ongoing monitoring of the areas listed under point 1 above.

As already described at paragraph **Error! Reference source not found.**, the peer review highlighted a set of different supervisory practices both at notification and during ongoing supervision. It appears therefore that this topic is ought to be further assessed and developed following an EEA-level approach by EIOPA.

INDIVIDUAL RECOMMENDED ACTIONS ADDRESSING THE SUPERVISION OF OUTSOURCING OF DELEGATED AUTHORITY TO UNDERWRITE AND SETTLE CLAIMS

In the context of ongoing supervision of outsourcing of delegated authority to underwrite and settle claims, a critical aspect to assess is the conflict of interest between the outsourcing undertaking and the service provider. Although having in place a robust system of supervision of this type of outsourcing, **MFSA-MT** has been recommended to further strengthen the type of controls it performs. In light of the above, the measures put in place by MFSA-MT on the undertakings under supervision have proved not being always effective at mitigating the conflict of interest risk. For further details on the recommended action please see Annex 2 – Overview recommended actions to NSAs.

ACTION for EIOPA on MGAs

As mentioned at paragraph **Error! Reference source not found.** above, further guidance regarding the MGAs-like business model may be needed to ensure convergence of supervision. For further details on the action for EIOPA, please see [Annex 4 – Overview actions for EIOPA](#).

2.6.5. PRINCIPLE OF PROPORTIONALITY

The Solvency II framework already embeds the application of principle of proportionality in the context of outsourcing focusing the majority of outsourcing requirements in case of outsourcing of critical or important operational functions or activities.

Notwithstanding the above, similarly to other areas of Solvency II Directive, certain requirements on outsourcing can be applied in a manner, which is proportionate to the nature, scale and complexity of the risks inherent in the business of an undertaking. For example, the areas where the application of principle of proportionality seems acceptable are:

- risk assessment of the critical or important operational function or activity outsourced;
- the level of detail of the due diligence of the service provider according to Article 274(3)(a) of Commission Delegated Regulation (EU) 2015/35 (*e.g.* in case of intragroup outsourcing or in case the service provider is already providing services in outsourcing to the undertaking);
- adaptation of the internal control system to manage the outsourcing.

However, areas such as the compliance to the contractual requirements set by Article 274(4) or the requirements set by Article 274(3) of Commission Delegated Regulation (EU) 2015/35 seem not be subject to the application of proportionality beyond what was already expressly established by the Legislator. For example, regardless the size of undertaking, the type of service provider or the critical or important activity being outsourced, there shall always be an outsourcing arrangement in place.

During its assessment, the PRC found a non-harmonised picture with several NSAs reporting not to apply the principle of proportionality as regards the supervision of outsourcing, while other NSAs reported to apply it. Only few authorities clearly defined a methodology for the application of the principle of proportionality (as overarching principle and not only focusing on outsourcing) and declined it for outsourcing requirements. Such authorities made a clear disclosure to the market regarding their stance.

Given the expected changes relating to the criteria to operationalise the application of the proportionality principle included in the Solvency II review, the PRC decided not to recommend the NSAs to develop and publish a methodology.

However, in light of article 29(3) of Solvency II Directive, the PRC encourages the NSAs not applying the principle of proportionality to outsourcing supervision to evaluate its application on a case-by-case basis taking into account the specificities of the outsourcing arrangement.

Furthermore, the PRC encourages NSAs to define internal criteria to identify the areas of the outsourcing requirements where proportionality in supervision can be applied.

The peer review highlighted that some NSAs do not apply proportionality in outsourcing supervision (*e.g.* BG, IS, HU, HR, NO, RO); while others do consider proportionality (*e.g.* AT, BE, CY, CZ, DE, FR, IT, LI LV, MT, SE).

2.7. ORGANISATIONAL ELEMENTS IN RELATION TO OUTSOURCING WITHIN NSAS

As described in the previous paragraphs, the supervision of outsourcing requires different types of skills spanning from legal and compliance to more technical skills on the specific function/activity outsourced. Furthermore, the different stages of outsourcing supervision (i.e. supervision at notification, on-site and off-site supervision) may require cross-team within one NSA and cross-NSAs coordination. Therefore, the PRC explored the following two aspects in relation to how the NSAs are organised for the supervision of outsourcing:

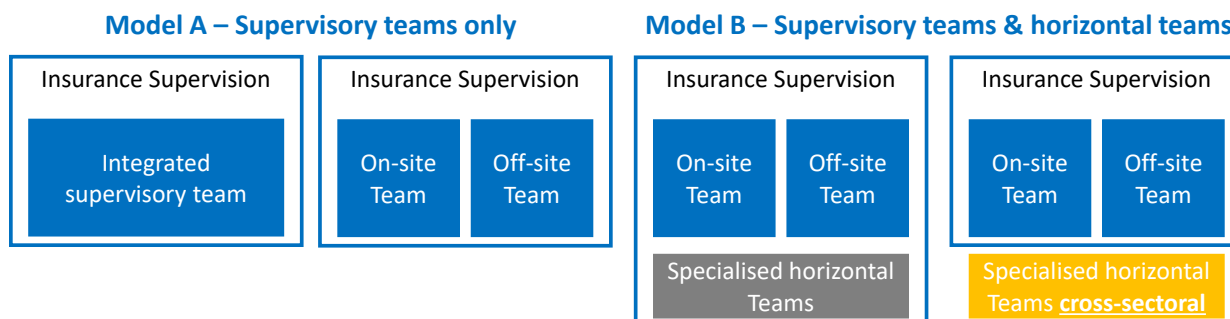
1. the structure of the supervisory teams;
2. the profile of the experts assigned to the supervision of outsourcing, including their number.

2.8. STRUCTURE OF THE SUPERVISORY TEAMS

NSAs typically assign the responsibility to supervise outsourcing to the departments/area responsible for insurance supervision. In very limited cases, the supervision of outsourcing is performed by teams not specifically assigned to insurance supervision. Notwithstanding the fact that other organizational models can be found, it is possible to distinguish the main organisational models:

- a) Supervision of outsourcing performed by the supervisory teams only (depending on the internal organization of the NSA, the off-site and on-site teams might be integrated);
- b) Supervision of outsourcing performed by supervisory teams supported by horizontal teams providing specialized expertise in governance and/or one of the fields of outsourcing (depending on the internal organization of the NSA, the specialized horizontal teams can be cross-sectoral).

CHART 7 – DIFFERENT ORGANISATIONAL MODELS



Out of 30 NSAs, 14 are organised following the Model A (BE, BG⁵⁵, CY, CZ, DK, FI, FR, IE⁵⁶, IS, LU, PL⁵⁷, PT, SE, SK⁵⁸). Among those authorities, several authorities (mainly the biggest ones) have set up mechanisms to ensure coordination: (i) between the supervisory teams, typically periodical meetings between the team leaders and the management to ensure the same understanding in topical areas; (ii) with other sectors, in case of integrated supervisors.

Out of 30 NSAs, 14 are organised following the Model B (DE, EE, EL, ES, HR, HU, IT, LT, LV, MT⁵⁹, NL, NO, RO, SI). In addition to coordination mechanisms like the ones described above, the authorities applying this organisational model have set up specialised organisational teams supporting the supervisors for most complex issues (mostly in case of ICT outsourcing). In HU, NL and NO supervision of ICT outsourcing is done by a dedicated team. The following NSAs have implemented a slightly different governance model:

- AT – in FMA (AT) supervisory team specialised on Governance assesses the outsourcing notification, on-site inspections are conducted by another team, and conduct of a procedure following up inspections is taken over by another different team. There is also a team in charge of providing analysis to supervisors.
- ES – in DGSFP, the team that supervises outsourcing is integrated into the authorisation, market conduct and distribution deputy directorate. In case of an on-site inspection, this deputy directorate will collaborate with the inspector assigned to the supervision tasks.

⁵⁵ The review of notifications is assigned to one specific supervisory team, acting as centre of excellence for outsourcing. The on-going supervision is carried out by supervisory teams [BG, PL, SK]

⁵⁶ In case of outsourcing notification performed as part of the authorization (licensing) process of an insurance undertaking, there is a specialized team within the Authorisation department assessing the outsourcing. In all other cases, the responsibility for outsourcing supervision is embedded within the supervisory teams. [IE, MT]

⁵⁷ See footnote 55

⁵⁸ See footnote 55

⁵⁹ See footnote 56

2.8.1. RESOURCES

The insurance supervisory authorities do not have dedicated staff to supervise exclusively outsourcing. The PRC assessed the number of full time equivalent (FTEs) involved by the different NSAs in the supervision of outsourcing: there is a high variance of the number of FTEs working on outsourcing, however on average the number of resources is very low potentially undermining the quality of supervisory review.

As reported above, in most of the cases, the supervision of outsourcing is carried out within the supervisory teams and, therefore, the profile reported by most NSAs relate to the standard profile of insurance supervisors (i.e. actuaries, economists, legal counsels, insurance experts, and in few cases IT experts).

As reported in paragraph 2.1.1.1, in certain member states, the number of notification of outsourcing is increasing. For example, the primary challenge faced by KNF (PL) in the supervision of outsourcing is the large amount of notified outsourcing. MFSA is another NSA which is dealing with a high number of notifications (most of them regarding MGAs). That is the reason why the Authority has decided to work on a risk scoring tool to assess the riskiness of outsourcing and tailor the time to be spent on them by supervisors.

3. IMPACT ON COMMON SUPERVISORY CULTURE

Building a common supervisory culture is a fundamental task for EIOPA to ensure the development of high-quality, effective and consistent supervision across the EEA. Regular, open dialogue and exchange of experiences between national supervisors and EIOPA is essential so that supervisors can learn from each other and enhance supervision.

This peer review has resulted in a comprehensive overview of the insurance market and supervisory practices of NSAs in the European Economic Area (EEA) covering many issues related to supervision of outsourcing. In light of the activity carried out, this peer review has made a direct contribution to fostering a common supervisory culture at the European level. This is also demonstrated by several NSAs having decided to implement solutions in the areas the recommended actions assigned to them, before the end of this peer review itself.

NSAs are now able to compare their supervisory approaches against those of the other NSAs. Such an overview is the basis for coherent and high quality supervision within the EEA. In addition to good practices, trends and best practices, this peer review highlighted the challenges to supervision of outsourcing experienced by the NSAs, with the objective to share supervisory experiences in this area, aimed at increasing supervisory convergence.

ANNEX 1 - COUNTRIES AND COMPETENT AUTHORITIES PARTICIPATING IN THIS PEER REVIEW AND THEIR ABBREVIATIONS

Country	Abbreviation	Name of concerned Competent Authority	Abbreviation used in the report (if any)
Austria	AT	Finanzmarktaufsicht	FMA-AT
Belgium	BE	National Bank of Belgium	NBB
Bulgaria	BG	Financial Supervision Commission	FSC
Cyprus	CY	Insurance Companies Control Service	ICCS
Czech Republic	CZ	Czech National Bank	CNB
Germany	DE	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
Denmark	DK	Danish Financial Supervisory Authority	DFSA
Estonia	EE	Finantsinspeksioon	EFSA
Greece	EL	Bank of Greece - Department of Private Insurance Supervision	BoG
Spain	ES	Dirección General de Seguros y Fondos de Pensiones - Ministerio de Asuntos Económicos y Transformación Digital	DGSFP
Finland	FI	Financial Supervision Authority	FIN-FSA
France	FR	Autorité de Contrôle Prudentiel et de Résolution(Prudential Control Authority)	ACPR
Croatia	HR	Hrvatska agencija za nadzor financijskih usluga	HANFA
Hungary	HU	Magyar Nemzeti Bank	MNB
Ireland	IE	Central Bank of Ireland	CBI
Iceland	IS	Fjármálaeftirlit Seðlabanka Íslands (Financial Supervisory Authority)	FSA- CBI
Italy	IT	Istituto per la Vigilanza sulle Assicurazioni	IVASS

Country	Abbreviation	Name of concerned Competent Authority	Abbreviation used in the report (if any)
Liechtenstein	LI	Finanzmarktaufsicht Liechtenstein	FMA-LI
Lithuania	LT	Lietuvos Bankas (Bank of Lithuania)	BoL
Luxembourg	LU	Commissariat aux Assurances	CAA
Latvia	LV	Financial and Capital Market Commission	FCMC
Malta	MT	Malta Financial Services Authority	MFSA
Netherlands	NL	De Nederlandsche Bank	DNB
Norway	NO	Finanstilsynet	NFSA
Poland	PL	Komisja Nadzoru Finansowego	KNF
Portugal	PT	Autoridade de Supervisão de Seguros e Fundos de Pensões	ASF-PT
Romania	RO	Financial Supervisory Authority	ASF-RO
Sweden	SE	Finansinspektionen (Financial Supervisory Authority)	FI
Slovenia	SI	Insurance Supervision Agency	AZN
Slovakia	SK	National Bank of Slovakia	NBS

ANNEX 2 – OVERVIEW RECOMMENDED ACTIONS TO NSAS

In this annex an overview is provided of the recommended actions to NSAs by country by topic and type of recommended actions. The recommended actions set out in this report, which are addressed to the relevant NSAs, should not be considered per se as EIOPA Recommendations for the purposes of Articles 16 and 30(4) of the EIOPA Regulation or of Article 25(4) of the EIOPA Decision on Peer Reviews

The improvements that several NSAs have implemented as an immediate response on the peer review or to the issued recommended actions are not reflected in the table below.

Area: Outsourcing Framework

MS	Recommended action
BG	<p>Acknowledging that for the first years of Solvency II the FSC has not duly assessed compliance of the market to the outsourcing requirements, the FSC has made certain progresses in structuring their supervisory framework on outsourcing with the publication of Ordinance on the requirements to the system of governance of insurers and reinsurers.</p> <p>However, the supervisory framework still presented several shortcomings at the time of the reference period of this peer review. The FSC is recommended to further develop and implement the supervisory framework on outsourcing considering all the findings identified above.</p> <p>It is also recommended that FSC engages in supervisory dialogues (through off-site, on-site or other supervisory actions) with undertakings under its supervision to ensure that the new supervisory framework and the published Ordinance on the requirements to the system of governance of insurers and reinsurers are well understood by the undertakings.</p>

Area: Outsourcing Framework

MS	Recommended action
HR	<p>HANFA is recommended to publish guidance to the relevant stakeholders regarding its expectations in relation to the information set out in Final Report on Public Consultation No.14.017 on Guidelines on System of Governance, which is not currently disclosed by the Ordinance on documentation for the outsourcing of activities or functions of (re-)insurance</p>

	<p>undertakings (undertaking). This could be done by referring to the explanatory notes in the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance.</p> <p>Such guidance should include details on the criteria to be followed by an undertaking to classify operational functions or activities as critical or important; risk assessment and due diligence aspects; the documentation that undertakings are expected to keep in relation to outsourcing; etc. in line with EIOPA Guidelines on System of Governance. This would complement the information provided in the above mentioned Ordinance.</p> <p>Once the guidance is published, HANFA is recommended to engage with undertakings in order to ensure alignment with the published expectations.</p>
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Area: Outsourcing Framework

MS	Recommended action
LU	<p>Acknowledging that for the first years of Solvency II the CAA presented several shortcomings as regards the supervision of compliance of undertakings with outsourcing regulatory requirements, the CAA has made certain progresses in structuring their supervisory framework on outsourcing. However, shortcomings are still evident at the time of the reference period of this peer review. The CAA is recommended to further develop and implement the review that has been initiated on its own initiative and implement the supervisory framework on outsourcing considering all the findings identified above. It is expected that the implementation also takes into account the conclusions set out in the peer review report, which will be approved by the Board of Supervisors of EIOPA.</p> <p>It is also recommended that after the finalisation of the supervisory framework on outsourcing, the CAA engages in supervisory dialogues (through off-site, on-site or other supervisory actions) with the undertakings under its supervision to ensure that the supervisory framework and any other relevant requirements are well understood by them.</p>

Area: Outsourcing Framework

MS	Recommended action
PT	ASF is recommended to finalise the regulatory standard.

Area: Outsourcing Framework - Definition and rules on certain type of outsourcing

Criteria to identify critical or important functions or activities (CIF)

MS	Recommended action
CY	<p>The ICCS is recommended to define and share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF) either by own means or by reference to EIOPA Guidelines on System of Governance and the explanatory notes in the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria to be applied in a proportionate manner should include at least the following elements:</p> <ul style="list-style-type: none"> • undertakings’ ability to continue to comply with the conditions required to maintain its operating authorisations; • undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; • undertakings’ operational impact; • undertakings’ stability or the continuity and quality of its services to policyholder; • undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and • the cumulative impact of (the combination of) several outsourced activities. <p>Moreover, the ICCS is recommended to communicate such criteria and process to all the relevant stakeholders, in a formal manner (<i>e.g.</i> guidelines, circular, publication on its website, other type of publication).</p>
CZ	<p>The CNB is recommended to share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF) either by own means or by reference to the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance or by issuing national tools reflecting the content of the Guidelines. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria, to be applied in a proportionate manner, should include at least the following elements:</p> <ul style="list-style-type: none"> • undertakings’ ability to continue to comply with the conditions required to maintain its operating authorisations;

	<ul style="list-style-type: none"> • undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; • undertakings’ operational impact; • undertakings’ stability or the continuity and quality of its services to policyholder; • undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and • the cumulative impact of (the combination of) several outsourced activities.
<p>ES</p>	<p>The DGSFP is recommended to define and share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF) either by reference to EIOPA Guidelines on System of Governance and the explanatory notes in the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance or by issuing national tools reflecting the content of the Guidelines. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria, to be applied in a proportionate manner, should include at least the following elements:</p> <ul style="list-style-type: none"> • undertakings’ ability to continue to comply with the conditions required to maintain its operating authorisations; • undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; • undertakings’ operational impact; • undertakings’ stability or the continuity and quality of its services to policyholder; • undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and • the cumulative impact of (the combination of) several outsourced activities.
<p>NO</p>	<p>The NFSA is recommended to further develop all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF) either by reference to EIOPA Guidelines on System of Governance and the explanatory notes in the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance or by issuing national tools reflecting the content of the Guidelines. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria, to be applied in a proportionate manner, should include at least the following elements:</p> <ul style="list-style-type: none"> • undertakings’ ability to continue to comply with the conditions required to maintain its operating authorisations; • undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; • undertakings’ operational impact; • undertakings’ stability or the continuity and quality of its services to policyholder;

	<ul style="list-style-type: none"> • undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and • the cumulative impact of (the combination of) several outsourced activities.
<p>PL</p>	<p>The KNF is recommended to define and share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF) either by reference to EIOPA Guidelines on System of Governance and the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance or by issuing national tools reflecting the content of the Guidelines. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria, to be applied in a proportionate manner, should include at least the following elements:</p> <ul style="list-style-type: none"> • undertakings’ ability to continue to comply with the conditions required to maintain its operating authorisations; • undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; • undertakings’ operational impact; • undertakings’ stability or the continuity and quality of its services to policyholder; • undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and • the cumulative impact of (the combination of) several outsourced activities.
<p>PT</p>	<p>The ASF is recommended to define and share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF) either by reference to EIOPA Guidelines on System of Governance and the explanatory notes in the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance or by issuing national tools reflecting the content of the Guidelines. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria, to be applied in a proportionate manner, should include at least the following elements:</p> <ul style="list-style-type: none"> • undertakings’ ability to continue to comply with the conditions required to maintain its operating authorisations; • undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; • undertakings’ operational impact; • undertakings’ stability or the continuity and quality of its services to policyholder; • undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and

	<ul style="list-style-type: none"> the cumulative impact of (the combination of) several outsourced activities.
<p>RO</p>	<p>The ASF-RO is recommended to define and share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF) either by reference to EIOPA Guidelines on System of Governance and the explanatory notes in the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance or by issuing national tools reflecting the content of the Guidelines. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria, to be applied in a proportionate manner, should include at least the following elements:</p> <ul style="list-style-type: none"> undertakings’ ability to continue to comply with the conditions required to maintain its operating authorisations; undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; undertakings’ operational impact; undertakings’ stability or the continuity and quality of its services to policyholder; undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and the cumulative impact of (the combination of) several outsourced activities.

SE	<p>The FI is recommended to define and share with all the relevant stakeholders the criteria to be considered by an undertaking to classify an activity or function as critical or important (CIF), either by reference to EIOPA Guidelines on System of Governance and the Final Report on Public Consultation No.14.017 on Guidelines on System of Governance or by issuing national tools reflecting the content of the Guidelines. In addition, it should address the expected processes of re-assessment of the criticality or importance of the function or activity previously outsourced, if the nature, scale and complexity of the risks inherent in the agreement and/or to the function or activity itself materially changes.</p> <p>Such criteria, to be applied in a proportionate manner, should include at least the following elements:</p> <ul style="list-style-type: none"> • undertakings’ ability to continue to comply with the conditions required to maintain its operating authorizations; • undertakings’ financial impact as well as the financial impact to the policyholders, or contract beneficiaries, or its reinsurer; • undertakings’ operational impact; • undertakings’ stability or the continuity and quality of its services to policyholder; • undertakings’ ability to comply with regulatory requirements in case of problems with the service provider; and • the cumulative impact of (the combination of) several outsourced activities.
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Area: Outsourcing Framework - Definition and rules on certain type of outsourcing

Boundaries between outsourcing of delegated authority to underwrite and settle claims and (re)insurance distribution

MS	Recommended action
DK	The FTNET is recommended to further clarify with the market the understanding set out in Guideline 61 of EIOPA Guidelines on the System of Governance, this is, that the activity of an insurance intermediary, who is not an employee of the undertaking, under delegated authority to underwrite business or settle claims in the name and on the account of an undertaking, is subject to outsourcing requirements, and therefore may be subject to notification if considered a critical or important function or activity.
IE	The CBI is recommended to clarify with the market the understanding set out in Guideline 61 of EIOPA Guidelines on the System of Governance, this is, that the activity of an insurance intermediary, who is not an employee of the undertaking, under delegated authority to underwrite business or settle claims in the name and on the account of an undertaking, is

	subject to outsourcing requirements, and therefore may be subject to notification if considered a critical or important function or activity.
SE	The FI is recommended to clarify with the market the understanding set out in Guideline 61 of EIOPA Guidelines on the System of Governance, that the activity of an insurance intermediary, who is not an employee of the undertaking, under delegated authority to underwrite business or settle claims in the name and on the account of an undertaking, is subject to outsourcing requirements, and therefore may be subject to notification if considered a critical or important function or activity.

Area: Notification

Structure of the notification

MS	Recommended action
AT	<p>The FMA is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and

	<p>7. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35).</p> <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>CY</p>	<p>The ICCS is recommended to adapt the form in use or develop a dedicated notification form to reflect the specificities of outsourcing. On the basis of an assessment of the practices highlighted by this peer review, such form should ensure that the following information is part of the is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the serve provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and <p>In case of intra-group outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>

<p>CZ</p>	<p>The CNB is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>DE</p>	<p>BaFin is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the notification documentation:</p>

	<ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (e.g. country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>EE</p>	<p>The development of a structured approach, such as the use of a template containing information to be submitted to the EFSRA on the outsourced activity, the service provider, and other elements regarding the exercise of the outsourced activity, including the relevant contractual arrangements governing the outsourcing, may prevent the submission of incomplete and inconsistent information. The EFSRA must ensure that, prior to outsourcing a critical or important function or activity, an undertaking does perform a risk assessment in compliance with Article 49(2) of the Solvency II Directive and Article 274(1),(3)(e) and (5)(b) of the Commission Delegated Regulation (EU) 2015/35; as well as a due diligence on the service provider in accordance with Article 49(2) of the Solvency II Directive and Article 274 (2) and (3)(a), (b) and (f) (5) (a) (c) and (d) of the Commission Delegated Regulation (EU) 2015/35.</p> <p>It is noted that a specific template for information regarding key function holder exists, but no template regarding the notification of outsourcing in other cases. The template used asks for</p>

	<p>information regarding the Fit & Proper assessment but is not generally suited to report outsourcing arrangements and outsourced functions or activities.</p>
<p>FI</p>	<p>The FIN-FSA is recommended to further develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the notification documentation:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>HR</p>	<p>HANFA is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for</p>

	<p>undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>HU</p>	<p>The MNB is recommended to further develop a structured approach regarding the information being requested from the undertaking at notification, possibly by improving the template used for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, the template for notification should include, in addition to general information on the undertaking, at least, the following information:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing;

	<ol style="list-style-type: none"> 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>LT</p>	<p>The BoL is recommended to further develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking;

	<ol style="list-style-type: none"> 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p>
<p>LV</p>	<p>The FCMC is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35).

	<p>In case the notification relates to a material development of an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function or activity thereafter.</p>
<p>NO</p>	<p>The NFSA is recommended to further develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the serve provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p>

	<p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>PT</p>	<p>The ASF is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (e.g. country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>RO</p>	<p>The ASF-RO is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should</p>

	<p>ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; 2. description of the rationale for outsourcing; 3. the name of service provider and evidence of its corporate details (<i>e.g.</i> country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details); 4. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 5. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 6. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 7. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 8. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>SE</p>	<p>The FI is recommended to develop a structured approach regarding the information being requested from the undertaking at notification, possibly by developing a template for undertakings to complete when they intend to submit an outsourcing notification or to notify material developments regarding a critical or important outsourced function or activity. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following information is part of the documentation contained in the notification:</p> <ol style="list-style-type: none"> 1. description of the scope of outsourcing; description of the rationale for outsourcing;

	<p>the name of service provider and evidence of its corporate details (e.g. country of establishment, shareholders structure, Legal Entity Identifier (LEI), if available, license to perform the activity, if applicable, address and other relevant contact details);</p> <ol style="list-style-type: none"> 2. a brief summary of the reason why the outsourced function or activity is considered critical or important by the undertaking; 3. a brief summary of the results of the risk assessment on the function or activity outsourced performed by the undertaking; 4. a brief summary of the results of the due diligence on the service provider performed by the undertaking; 5. evidence/attestation that the written arrangement between the undertaking and the service provider complies with Articles 274(3)(c) and 274(4) of the Commission Delegated Regulation (EU) 2015/35; and 6. in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the points above, as deemed necessary.</p> <p>Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.</p>
<p>SI</p>	<p>The AZN is recommended to further develop its structured approach regarding the information being requested from the undertaking at notification. On the basis of an assessment of the practices highlighted by this peer review, such approach should ensure that the following additional (compared to the current practices) information is part of the documentation contained in the notification:</p> <ul style="list-style-type: none"> • in case of intragroup outsourcing, a description of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of the Commission Delegated Regulation (EU) 2015/35). <p>In case the notification relates to a material development on an outsourced critical or important function or activity, it should include a description of the material development and the impact of the latter on the risk profile of the undertaking, including an update of the areas, which were part of the notification.</p>

Where the termination of an outsourcing arrangement is notified, it should include the reason for the termination of the contract and what will happen to the function thereafter.

Area: Notification process

Feedback to the notification (“right to object”)

MS	Recommended action
FR	<p>While the existence of a vast array of supervisory tools (<i>e.g.</i> supervisory dialogue, recommendation; ex-post corrective actions; enforcement measures, etc.) is recognised as being at the disposal of the ACPR, the NSA is recommended to pursue, together with the relevant authorities the establishment of a pre-emptive power reflecting the right to object the entering into force of an outsourcing agreement, where the NSA has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place (i.e. when the NSA is of the opinion that the requirements of Article 49(2) of the Solvency II Directive are breached by the proposed outsourcing).</p>
RO	<p>Where the notified intention to outsource a critical or important function or activity raises concerns as regards its compliance with applicable regulatory requirements, the ASF is recommended to act prior to the entry into force of outsourcing arrangements, making use of the already available supervisory tools.</p> <p>While the existence of a vast array of supervisory tools (<i>e.g.</i> supervisory dialogue, recommendation; ex-post corrective actions; enforcement measures, etc.) is recognised as being at the disposal of the ASF, the NSA is recommended to pursue, together with the relevant authorities, the establishment of a pre-emptive power reflecting the right to object the entering into force of an outsourcing agreement, where the NSA has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place (i.e. when the NSA is of the opinion that the requirements of Article 49(2) of the Solvency II Directive are breached by the proposed outsourcing).</p>
SE	<p>While the existence of a vast array of supervisory tools (<i>e.g.</i> supervisory dialogue, recommendation; ex-post corrective actions; enforcement measures, etc.) is recognised as being at the disposal of the FI, the NSA is recommended to pursue, together with the relevant authorities the establishment of a pre-emptive power reflecting the right to object the entering into force of an outsourcing agreement, where the NSA has serious and motivated concerns on the compliance of the intended outsourcing with the regulatory requirements in place (i.e.</p>

	when the NSA is of the opinion that the requirements of Article 49(2) of the Solvency II Directive are breached by the proposed outsourcing).
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Area: Supervision of outsourcing at notification

Framework for the NSA (internal procedures – supervision of notifications)

MS	Recommended action
CY	<p>The ICCS is recommended to further develop internal procedures to cover the process of supervisory assessment and review of the notification received by the undertakings prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities. The internal procedures or guidance should reflect a risk-based supervision and include explanation of the means and tools used to carry out the assessment of the notification received, which should cover at least the risk assessment of the outsourced function and due diligence of the service provider performed by the undertaking, and the latter’s compliance with the other requirements of Article 274 of the Commission Delegated Regulation (EU) 2015/35.</p> <p>Furthermore, the ICCS is recommended to make use of the above mentioned procedure, following a risk-based approach, to strengthen its supervisory review of the notification of outsourcing of a critical or important function or activity in order to anticipate potential issues and drawbacks which may arise from an outsourcing arrangement before it enters into force.</p>
DE	<p>BaFin is recommended to further develop internal procedures to cover the process of supervisory assessment and review of the notification received by the undertakings prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities. The internal procedures or guidance should reflect a risk-based supervision and include explanation of the means and tools used to carry out the assessment of the notification received, which should cover at least the risk assessment of the outsourced function and due diligence of the service provider performed by the undertaking, and the latter’s compliance with the other requirements of Article 274 of the Commission Delegated Regulation (EU) 2015/35 in order to anticipate potential issues and drawbacks which may arise from an outsourcing arrangement before it enters into force.</p>
ES	<p>The DGFSP is recommended to further develop internal procedures to cover the process of supervisory assessment and review of the notification received by the undertakings prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities. The internal procedures or guidance should reflect a risk-based supervision and include explanation of the means and tools used to carry out the assessment of the notification received, which should cover at least the risk assessment of the outsourced function and due diligence of the service provider</p>

	<p>performed by the undertaking, and the latter’s compliance with the other requirements of Article 274 of the Commission Delegated Regulation (EU) 2015/35.</p> <p>Furthermore, the DGFSP is recommended to make use of the above mentioned procedure, following a risk based-approach, to strengthen its supervisory review of the notification of outsourcing of a critical or important function or activity in order to anticipate potential issues and drawbacks which may arise from an outsourcing arrangement before it enters into force.</p>
FI	<p>The FIN-FSA is recommended to further develop internal procedures to cover the process of supervisory assessment and review of the notification received by the undertakings prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities. The internal procedures or guidance should reflect a risk-based supervision and include explanation of the means and tools used to carry out the assessment of the notification received, which should cover at least the risk assessment of the outsourced function and due diligence of the service provider performed by the undertaking, and the latter’s compliance with the other requirements of Article 274 of the Commission Delegated Regulation (EU) 2015/35. Furthermore, the FIN-FSA is recommended to make use of the above mentioned procedure, following a risk based-approach, to strengthen its supervisory review of the notification of outsourcing of a critical or important function or activity in order to anticipate potential issues and drawbacks which may arise from an outsourcing arrangement before it enters into force.</p>
RO	<p>The ASF is recommended to further develop internal procedures to cover the process of supervisory assessment and review of the notification received by the undertakings prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities. The internal procedures or guidance should reflect a risk-based supervision and include explanation of the means and tools used to carry out the assessment of the notification received, which should cover at least the risk assessment of the outsourced function and due diligence of the service provider performed by the undertaking, and the latter’s compliance with the other requirements of Article 274 of the Commission Delegated Regulation (EU) 2015/35.</p> <p>Furthermore, the ASF is recommended to make use of the above mentioned procedure, following a risk-based approach, to strengthen its supervisory review of the notification of outsourcing of a critical or important function or activity in order to anticipate potential issues and drawbacks which may arise from an outsourcing arrangement before it enters into force.</p>
SE	<p>The FI is recommended to develop internal procedures to cover, following a risk-based approach, the process of supervisory assessment and review of the notification received by the undertakings prior to the outsourcing of critical or important functions or activities, as well as any subsequent material developments with respect to those functions or activities. The internal procedures or guidance should reflect a risk-based supervision and include explanation of the means and tools used to carry out the assessment of the notification received, which should cover at least the risk assessment of the outsourced function and due</p>

	<p>diligence of the service provider performed by the undertaking, and the latter’s compliance with the other requirements of Article 274 of the Commission Delegated Regulation (EU) 2015/35. This should recognise the variety of the circumstances already identified by FI while ensuring a more tailored, structured, consistent and focused review of the notification.</p> <p>Furthermore, the FI is recommended to make use of the above mentioned procedure, following a risk based-approach, to strengthen its supervisory review of the notification of outsourcing of a critical or important function or activity, in order to anticipate potential issues and drawbacks, which may arise from an outsourcing arrangement before it enters into force.</p>
SK	<p>The NBS is recommended to consider in the generic internal procedure on off-site supervision being prepared, to further develop internal procedures to cover the process of supervisory assessment and review of the notification received by the undertakings prior to the outsourcing of critical or important functions or activities, as well as any subsequent material developments with respect to those functions or activities. The internal procedures or guidance should reflect a risk-based supervision and include explanation of the means and tools used to carry out the assessment of the notification received, which should cover at least the risk assessment of the outsourced function and due diligence of the service provider performed by the undertaking, and the latter’s compliance with the other requirements of Article 274 of the Commission Delegated Regulation (EU) 2015/35.</p> <p>Furthermore, the NBS is recommended to make use of the above mentioned procedure, following a risk-based approach, to strengthen its supervisory review of the notification of outsourcing of a critical or important function or activity in order to anticipate potential issues and drawbacks, which may arise from an outsourcing arrangement before it enters into force.</p>

Area: Supervision of outsourcing at notification

MS	Recommended action
MT	The MFSA is recommended to extend the scoring tool to other types of outsourcing. As part of the follow-up of this peer review, a full review of the tool under development will be performed to ensure it supports a risk-based approach regarding supervision.

Area: Supervision of outsourcing at notification

MS	Recommended action
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NO	NFSA is recommended to extend the approach for assessing outsourcing arrangements in the area of IT to outsourcing arrangements other than IT, provided they entail the outsourcing of a key function or of a Critical Important Function, especially at the time of the notification.
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Area: Documentation and information management

MS	Recommended action
CY	The ICCS is recommended to improve the excel files in use on information on outsourcing so it includes information on outsourcing per undertaking, such as the key functions and other critical or important functions being outsourced as well as the relevant service providers. It should be designed in a way allowing for an overall view both at aggregated (<i>e.g.</i> market), undertaking level of the critical or important functions outsourced and service provider level to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, and that supports the identification of empty shells. Finally, to the extent possible, the information should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.
DE	BaFin is recommended to ensure that any new development on tools leading to databases with information on outsourcing includes information on outsourcing per undertaking, such as the key functions and other critical or important functions being outsourced as well as the relevant service providers. Such tools should be designed in a way allowing for an overall view both at aggregated (<i>e.g.</i> market) and undertaking level of the critical or important functions outsourced and at service provider level in order to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, and helping identifying empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.
DK	The FTNET is recommended to develop an internal register/database which includes information on outsourcing per undertaking, such as the key functions and other critical or important functions being outsourced as well as the relevant service providers. The internal register/database should be designed in a way allowing for an overall view both at aggregated (<i>e.g.</i> market), and undertaking level of the critical or important functions outsourced, and service provider level in order to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, supporting also the identification of empty shells. Finally, to the extent possible, the internal register/database should maximize its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.

FI	The FIN-FSA is recommended to develop an internal register/database which includes information on outsourcing per undertaking, such as the key functions and other critical or important functions being outsourced as well as the relevant service providers. The internal register/database should be designed in a way allowing for an overall view both at aggregated (<i>e.g.</i> market) and undertaking level of the critical or important functions outsourced and service provider level to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, supporting also the identification of empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.
HU	The MNB is recommended to adjust the internal register/database in a way allowing for an overall view at aggregated (<i>e.g.</i> market) level of the critical or important functions outsourced, highlighting concentration risks at market level, and helping identifying empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.
IE	The CBI is recommended to develop an internal register/database which includes information on outsourcing per undertaking, such as the key functions and other critical or important functions being outsourced as well as the relevant service providers. The internal register/database should be designed in a way allowing for an overall view both at aggregated (<i>e.g.</i> market), and undertaking level of the critical or important functions outsourced and at service provider level to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, supporting also the identification of empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.
IT	IVASS is recommended to extend its internal register to cover critical or important functions or activities. The internal register/database should be designed in a way which allow for an overall view both at aggregated (<i>e.g.</i> market) and undertaking level of the critical or important functions or activities outsourced; and also at the service provider level in order to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, and supporting the identification of empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.
NL	The DNB is recommended to consider, in the further development of the internal register, to also include in the latter information on outsourcing per undertaking, such as the key functions and other critical or important functions being outsourced as well as the relevant service providers and be designed in a way allowing for an overall view both at aggregated (<i>e.g.</i> market) and undertaking level of the critical or important functions outsourced, and at service provider level in order to identify when services are being outsourced to the same service

	provider, highlighting concentration risks at market level, and helping identifying empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk based approach.
NO	The NFSA is recommended to develop an internal register/database which includes information on outsourcing per undertaking, such as the key functions and other critical or important functions being outsourced as well as the relevant service providers. The internal register/database should be designed in a way allowing for an overall view both at aggregated (e.g. market) and undertaking level of the critical or important functions outsourced, and at the service provider level to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, supporting also the identification of empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.

Area: Documentation and information management

MS	Recommended action
FR	<p>ACPR is recommended to further develop their internal register/database which already includes information on outsourcing ensuring that is designed in a way allowing for an overall view both at aggregated (e.g. market), undertaking level of the critical or important functions or activities outsourced and service provider level to identify when services are being outsourced to the same service provider, highlighting concentration risks at market level, and support the identification of empty shells. Finally, to the extent possible, the internal register/database should maximise its usefulness to plan and perform ongoing supervision activities adopting a risk-based approach.</p> <p>ACPR is recommended to include in such internal register or database all existing outsourcing arrangements, including those entered into before the entry into force of the Solvency II Directive, such as to integrate the possibility to distinguish between notifications of new outsourcing and those concerning material developments.</p>

Area: Ongoing supervision of outsourcing

Off-site supervision

MS	Recommended action
BE	<p>The NBB is recommended to further establish and use internal procedures in the area of ongoing supervision regarding ongoing off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on

	<p>outsourcing;</p> <ul style="list-style-type: none"> • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>CY</p>	<p>The ICCS is recommended to further establish and use internal procedures in the area of ongoing supervision regarding ongoing off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>DE</p>	<p>BaFin is recommended to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business

	<p>Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and</p> <ul style="list-style-type: none"> the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>EE</p>	<p>The EFSRA is recommended to further develop its supervisory practices in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreements, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>EL</p>	<p>The BoG is recommended to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>ES</p>	<p>The DGFSP is recommended to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p>

	<ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>FI</p>	<p>The FIN-FSA is recommended to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>HR</p>	<p>HANFA is recommended to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party

	<p>certifications on the activity of the service provider; Internal and External Audit reports; etc.); and</p> <ul style="list-style-type: none"> • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
HU	<p>The MNB is recommended to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
LI	<p>The FMA is recommended to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
NO	<p>The NFSA is recommended to establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing;

	<ul style="list-style-type: none"> triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>PL</p>	<p>The KNF is recommended to establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
<p>RO</p>	<p>The ASF is recommended to consider in the context of the internal procedures under approval to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and the assessment of undertaking’s documentation requested to be performed off-site by the NSA.

SK	<p>The NBS is recommended to consider in the generic internal procedure on off-site supervision being prepared to further establish and use internal procedures in the area of ongoing supervision regarding off-site supervision of outsourcing including but not limited to:</p> <ul style="list-style-type: none"> • the review of regular supervisory reports, ORSA and other supervisory reporting on outsourcing; • triggers, taking into account the level of outsourcing by the undertaking and following a risk-based approach, to request additional information regarding outsourcing (<i>e.g.</i> AMSB meeting minutes related to the approval of outsourcing, outsourcing written agreement, internal procedures of the undertaking and/or of the service provider relating to the outsourced function; accounting flows; ICT system logs and information exchange between the service provider and the undertaking; Business Continuity Plan, Disaster Recovery Plan, and business contingency plans; third party certifications on the activity of the service provider; Internal and External Audit reports; etc.); and • the assessment of undertaking’s documentation requested to be performed off-site by the NSA.
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Area: Ongoing supervision of outsourcing

On-site supervision

MS	Recommended action
CY	<p>The ICCS is recommended to further develop and use internal guidelines to:</p> <ol style="list-style-type: none"> 1) guide the scope of its supervisory activities, such as the decision on whether: <ul style="list-style-type: none"> • an on-site inspection focused on outsourcing should be performed, at the undertaking’s premises or at the service provider’s premises; • to include a focus of outsourcing as part of the scope of on-site inspections not specifically focused on it (<i>e.g.</i> in case of inspections on the overall system of governance); and 2) identify the documentation and/or information to be requested from undertakings before carrying out an on-site inspection with outsourcing in its scope. Such documentation and/or information can include, for example, the outsourcing policy; the list of all outsourced services; the list of the service providers; the internal procedures of the undertaking to monitor and control the outsourced services.
FI	<p>The FIN-FSA is recommended to further develop and use internal guidelines to:</p> <ol style="list-style-type: none"> 1) guide the scope of its supervisory activities, such as the decision on whether: <ul style="list-style-type: none"> • an on-site inspection focused on outsourcing should be performed, at the undertaking’s premises or at the service provider’s premises;

	<ul style="list-style-type: none"> • to include a focus of outsourcing as part of the scope of on-site inspections not specifically focused on it (e.g. in case of inspections on the overall system of governance). <p>2) identify the documentation and/or information to be requested from undertakings before carrying out an on-site inspection with outsourcing in its scope. Such documentation and/or information can include, for example, the outsourcing policy; the list of all outsourced services; the list of the service providers; the internal procedures of the undertaking to monitor and control the outsourced services; and provide a list of the typical areas to be assessed during an on-site inspection covering outsourcing.</p>
FR	<p>The ACPR is recommended to consider a higher focus on outsourcing on its supervisory plans. This will allow a better view of the outsourcing and its risks in the market.</p>
PT	<p>The ASF is recommended to further develop and use internal guidelines to:</p> <p>1) guide the frequency and scope of its supervisory activities, following a risk-based approach, such as the decision on whether:</p> <ul style="list-style-type: none"> • an on-site inspection focused on outsourcing should be performed, at the undertaking’s premises or at the service provider’s premises; • to include a focus of outsourcing as part of the scope of on-site inspections not specifically focused on it (e.g. in case of inspections on the overall system of governance). <p>2) identify the documentation and/or information to be requested from undertakings before carrying out an on-site inspection with outsourcing in its scope. Such documentation and/or information can include, for example, the outsourcing policy; the list of all outsourced services; the list of the service providers; the internal procedures of the undertaking to monitor and control the outsourced services; and</p> <p>3) provide a list of the typical areas to be assessed during an on-site inspection covering outsourcing.</p>
RO	<p>The ASF-RO is recommended to consider in the context of the internal procedures under approval to further develop and use internal guidelines to:</p> <p>1) guide the scope of its supervisory activities, such as the decision on whether:</p> <ul style="list-style-type: none"> • an on-site inspection focused on outsourcing should be performed, at the undertaking’s premises or at the service provider’s premises; • to include a focus of outsourcing as part of the scope of on-site inspections not specifically focused on it (e.g. in case of inspections on the overall system of governance).

	<p>2) identify the documentation and/or information to be requested from undertakings before carrying out an on-site inspection with outsourcing in its scope. Such documentation and/or information can include, for example, the outsourcing policy; the list of all outsourced services; the list of the service providers; the internal procedures of the undertaking to monitor and control the outsourced services; and</p> <p>3) provide a list of the typical areas to be assessed during an on-site inspection covering outsourcing.</p>
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Area: Ongoing supervision of outsourcing

Supervision of intra-group outsourcing (solo perspective)

MS	Recommended action
CY	From the perspective of subsidiaries (outsourcing functions), and in line with Article 274 (2) of the Commission Delegated Regulation (EU) 2015/35, the ICCS is recommended to dive deeper into its assessment to analyse the extent of control held by the undertaking on its service provider and the undertaking’s ability to influence the action of the service provider. Reference to the assessment of costs of services and the independence of the management body of undertakings in monitoring the services should be included in the procedure. Concerns raised from such assessments should be discussed in the colleges of supervisors.
FI	From the perspective of subsidiaries (outsourcing functions), and in line with Article 274 (2) of the Commission Delegated Regulation (EU) 2015/35, the FIN-FSA is recommended to dive deeper into its assessment primarily, but not limited to, at notification stage to analyse the extent of control held by the undertaking on its service provider and the undertaking’s ability to influence the action of the service provider. Reference to the assessment of costs of services and the independence of the management body of undertakings in monitoring the services should be included in the procedure. Concerns raised from such assessments should be discussed in the colleges of supervisors.
LV	From the perspective of subsidiaries (outsourcing functions), and in line with Article 274 (2) of the Commission Delegated Regulation (EU) 2015/35, the FCMC is recommended to dive deeper into its assessment primarily, but not limited to, at notification stage to analyse the extent of control held by the undertaking on its service provider and the undertaking’s ability to influence the action of the service provider. Reference to the assessment of costs of services and the independence of the management body of undertakings in monitoring the services should be included in the procedure. Concerns raised from such assessments should be discussed in the colleges of supervisors.

PT	From the perspective of subsidiaries (outsourcing activities), and in line with Article 274 (2) of the Commission Delegated Regulation (EU) 2015/35, the ASF is recommended to dive deeper into its assessment to analyse the extent of control held by the undertaking on its service provider and the undertaking’s ability to influence the action of the service provider. Reference to the assessment of costs of services and the independence of the management body of undertakings in monitoring the services should be included in the procedure. Concerns raised from such assessments should be discussed in the colleges of supervisors.
RO	From the perspective of subsidiaries (outsourcing services), and in line with Article 274 (2) of the Commission Delegated Regulation (EU) 2015/35, the ASF-RO is recommended to dive deeper into its assessment to analyse the extent of control held by the undertaking on its service provider and the undertaking’s ability to influence the action of the service provider. Reference to the assessment of costs of services and the independence of the management body of undertakings in monitoring the services should be included in the procedure. Concerns raised from such assessments should be discussed in the colleges of supervisors.

Area: Ongoing supervision of outsourcing

Supervision of outsourcing of delegated authority to underwrite and settle claims

MS	Recommended action
MT	<p>MFSA is recommended to strengthen its performance of specific controls and follow-up actions regarding outsourcing of delegated authority to underwrite and settle claims. As part of these controls, the MFSA is recommended, following a risk-based-approach and in a proportionate manner, to:</p> <ul style="list-style-type: none"> a) perform a thorough assessment of the conflicts of interest and the interlinks between the undertaking and that type of service provider; and b) formally engage with undertakings where such conflict of interest occurs, in order to address them; c) ensure that the written agreement concluded between the undertaking and the service provider complies with the policies approved by the undertaking, which should follow MFSA’s supervisory expectations, and apply corrective measures where such provision is not set out in the written agreement.

ANNEX 3 – BEST PRACTICES IDENTIFIED DURING THE REFERENCE PERIOD

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
1	Outsourcing Framework Communication of the outsourcing framework to the market	CBI (IE)	<p>EIOPA considers it a best practice when NSAs use a broad range of documentation to express to the undertakings their expectations, for example as regards their obligations towards the regulatory aspects of outsourcing. Such expectations may be transmitted by the NSAs through Q&A, guidance, policy notes, speeches, press releases, conferences, publications, etc.</p> <p><u>Description</u></p> <p>The CBI has published in several occasions consultation papers, discussion papers which offered as guidance on outsourcing.</p> <p>Example of consultation/discussion papers</p> <p>The CBI published, in November 2018, the discussion paper “Outsourcing – Findings and Issues for Discussion”, which explains CBI’s view on the arising risks within the outsourcing landscape (<i>e.g.</i> concentration risk; chain outsourcing; substitutability, etc.) and invites the relevant stakeholders to join a discussion on such issues.</p> <p>Another example is the discussion paper published in 2019 “Use of Services Companies in the Insurance Sector”, which focuses on arrangements observed within the insurance sector involving the extensive provision of staffing and other services, by separate legal entities.</p>
2.	Outsourcing Framework – Definitions and rules on certain type of outsourcing	ACPR (FR);	<p>EIOPA considers it a best practice when NSAs further complements the non-exhaustive list, set out in Paragraph 2.291 of the Final Report on</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
	<p>- criteria to identify critical or important functions or activities (CIF)</p>		<p>Public Consultation No. 14/017 on Guidelines on System of Governance, of what could be considered a CIF. In addition, for the sake of clarity, there can also be an advantage in proving criteria that highlight what does not constitute a CIF.</p> <p><u>Description</u></p> <p>The French Insurance Code (article R354-7) establishes the criteria to be followed by undertakings in determining CIF: (i) cost of the outsourced activity; (ii) financial and operational impact, as well as impact on the reputation of the undertaking if the service provider is unable to accomplish its activities in due time (iii) difficulties to find other service providers or to (re-)establish the CIF within the undertaking ; (iv) the undertaking’s ability to comply with regulatory requirements in case of problems with the service provider; (v) potential losses for policyholders or contract beneficiaries or for reinsured undertakings in case of failure of the service provider.</p> <p>In addition, the French Insurance Code also provides criteria helping insurers in identifying functions or activities that should not be considered as CIF, namely: (i) consulting and other services not forming part of the activities covered by its license, including the furniture of legal advice, staff training, billing services and security of premises and company staff; (ii) the purchase of standard services, including those providing market information or price data feeds.</p> <p>Despite the fact that national law is not necessarily expected to set out the criteria above nor are countries expected to replicate the criteria identified by the French law, these provide a good example of what can be developed by each NSA. Regardless of the instrument used (whether the</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>latter is a legal act or not), the NSAs should be able to identify similar criteria to classify a CIF, based on the specificities and size of their own market and to communicate them to the market (e.g. by a legal act; guidance to the market; etc.). The establishment of such provisions would allow the insurance market to get a common interpretation and understanding of the meaning of CIF and, therefore, further ensure a consistent supervisory approach.</p>
3.	Notification Process structure of the notification	– NBB (BE), DGSFP (ES); ACPR (FR); and MFSA (MT)	<p>EIOPA considers it a best practice when NSAs have in place a structured approach for the provision of information requested from the undertaking at the notification of a new outsourced activity or of a material change regarding a previously notified outsourced activity and, in addition, have implemented a step by step approach as regards the detailed assessment of such information. The digitalisation of this process, is also considered as a best practice, as it increases comparability across notifications, transparency of the process and as the potential to be resource efficient. A specific supervisory approach requires a broad set of information on the service provider and assesses the feasibility of communication of the NSA and the service provider if needed is also considered as a best practice, as it may provide more robust conclusions as regards the compliance of outsourcing with regulatory requirements and ascertain the accuracy of the risk assessment and due diligence conducted by the undertaking.</p> <p><u>Description</u> NBB (BE)</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>NBB's template for notifying the outsourcing of a CIF includes information such as: (i) the description of the activity or function to be outsourced; (ii) the reasons why the function or activity is considered to be critical or important; (iii), the starting and termination date of the outsourcing arrangement; (iv) the reasons for outsourcing; (v) information on annual costs of the outsourcing; (vi) specific information on service provider; (vii) etc.</p> <p>Depending on what type of CIF is outsourced, further specified information and documents are required to be submitted at notification. For example, when an independent control function is being outsourced, the following information is required: a copy of the written outsourcing agreement; a list of persons to perform function at the service provider; additional information on service provider; a fit and proper file and information on the responsible person at undertaking; information on reporting between undertaking and service provider; and exit strategy. Another example relates to the case where the service provider makes use of sub-outsourcing: a description of the sub-outsourcing; identification of service providers and respective locations. Other types of outsourcing also require additional information, such as the case where the outsourcing relates to the storage of (re)insurance documents at a place different than the registered office; or when the service provider is established in a third country.</p> <p>Moreover, according to NBB's notification requirements, each notification on outsourcing of a CIF contains an opinion of the person responsible for the compliance function. Said opinion provides an assessment and a declaration that regulatory requirements for outsourcing are</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>complied with and that the information submitted to NBB is complete. For example, the compliance function assesses whether the authorisation conditions are met⁶⁰; if a due diligence of the service provider and risk assessment has been conducted in a satisfactory manner; whether minimum requirements for the outsourcing agreement are met; if the service provider's risk management and internal control system are adequate enough; if outsourced functions or activities have sufficiently been taken into account in the risk management and internal control system; whether regular monitoring of the outsourced functions or activities (e. g. using key performance indicators) is performed and if suitable contingency plans and documented exit strategies are in place.</p> <p>DGSFP (ES)</p> <p>DGSFP provides a specific electronic communication, in the form of a template, to undertakings for notification of outsourcing of any of its CIFs. In case of a new notification of outsourcing, the undertaking must: (i) indicate whether it is outsourcing a key function; (ii) briefly describe the outsourced function or activity; (iii) provide information on the service provider, (iv) provide information (including curriculum vitae and criminal record) regarding the person responsible for the outsourcing; and (v) either submit a copy of the minute of the outsourcing arrangement, or attach a form confirming</p>

⁶⁰ The compliance officer must assess and confirm that the insurance undertaking has ensured that the authorization conditions in relation to the outsourcing of the critical or important function or activity have been complied with, i.e. i) where the performance of the function or activity requires an authorisation or registration, the service provider has been authorised or registered or is allowed to perform these activities or functions in accordance with the applicable national legal framework; to a service provider established in a third country, the specific conditions regarding governance requirements set out in national legislation for such cases have been met.

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>compliance with Article 274 of the Commission Delegated Regulation (EU) 2015/35 .</p> <p>A structured approach to the notification of a CIF, if specific enough, can improve the quality and efficiency of supervision at notification of outsourcing. With such structured approach, NSAs would already have enough information to assess the outsourcing of CIFs and foreseeably would not need to request much more additional information afterwards for their final assessment. Another benefit of such structured approach is better clarity and easier comparability, by the NSA, of notified information by the undertakings. The use of forms or templates for the digital submission of information also enhances transparency towards undertakings regarding the information they are required to provide when notifying the outsourcing of CIFs.</p> <p>Moreover, where the notified information is already certified by the undertaking's compliance function, this may provide the NSA with an additional level of assurance that the outsourcing of the CIF under notification was properly assessed by the undertaking.</p> <p>ACPR (FR)</p> <p>ACPR's template for notifying the outsourcing of a CIF includes a comprehensive set of information. Firstly, information on the outsourcing arrangement is required, including, for example: a description of the outsourced activity and why it should be considered critical or important; reason for outsourcing; dates of decision to enter into and implementation of the outsourcing arrangement; law governing the outsourcing arrangement; last date of approval of the written outsourcing policy; next contract renewal date.</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>Secondly, ACPR also requires information of and the assessment performed by the undertaking on the service provider, which shall include, namely: the sector of activity; where applicable, the name of the parent company of the service provider; in case of an outsourcing of a key function, information on the person responsible within the service provider including fit and proper assessment of said person; information on the possibility for the service provider to use a subcontractor (sub-outsource); etc.</p> <p>Thirdly, the service provider's potential cooperation with ACPR is also assessed. For example, through a description of the contractual clause(s) setting out the service provider's cooperation with the NSA and the rights and modalities of access of the latter (and of the undertaking and its external auditor) to the data and premises of the service provider.</p> <p>ACPR also requires a description of the internal control framework for outsourcing, including, for example, a summary of the outsourcing risk assessment and of the business continuity plan for outsourcing; reporting arrangements; dates of last audits and expected frequency thereof; and evidence that outsourcing is not likely to seriously compromise the quality of the governance system, to unduly increase operational risk, nor to adversely affect the continuous provision of a satisfactory level of service in respect of insured persons, policyholders and beneficiaries of contracts and reinsured undertakings.</p> <p>MFSA (MT)</p> <p>MFSA has developed a structured and comprehensive process supported by a well-designed template to collect notifications from its supervised undertakings.</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>Considering the relative importance on the total number of notifications of the ones relating to outsourcing to MGAs, the approach defined by MFSA differentiates between:</p> <ul style="list-style-type: none"> • Notification related to MGAs outsourcing (outsourcing of delegated underwriting activities or claim management), where the MFSA requires undertakings to report several prospective information on the business relationship between the outsourcing undertaking and the MGA. Those information includes for example the binder agreement, the development plan of premiums and/or claims managed by the MGA, operational and technical key performance indicators. and • Notifications of outsourcing of other critical or important functions. <p>To support their supervisory review of the notification, MFSA has developed an internal procedure guiding the supervisory assessment in case of outsourcing of critical or important functions and MGAs, with a focus on the latter.</p>
4.	Ongoing supervision of outsourcing (thematic reviews)	FIN-FSA (FI); KNF (PL)	<p>EIOPA considers it a best practice when NSAs perform horizontal thematic reviews in order to assess compliance of the outsourcing activities with the requirements of the legislation across the insurance sector.</p> <p>The launch of a thematic review and the selection of a topic shall be risk-based, and emerge from the risk-assessment exercise carried out by the NSA. Given that a thematic review is extensive and resource intensive, its scope should be clearly circumscribed and the launch of such exercise</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>should be considered as part of a prioritisation exercise by the NSA.</p> <p>A thematic review can serve as a diagnostic tool or it can also be used to carry out a deep-dive investigation in already identified risks and issues in order to better fine-tune policy or supervisory measures to address such risks and issues. Such thematic reviews may also be useful in order to identify trends in outsourcing by undertakings and to update the NSAs' database on outsourcing.</p> <p><u>Description</u></p> <p>FIN-FSA (FI)</p> <p>In 2017, FIN-FSA carried out a thematic review specifically on outsourced activities. It targeted all non-life and life insurance companies authorised and regulated in Finland. The purpose of the thematic review was to assess compliance with the outsourcing legal framework including intra-group outsourcing, how critical or important activities have been classified and how the operational risk has been taken into account when outsourcing operations. In 2018 a press release was issued detailing the significant deficiencies discovered from the thematic review.</p> <p>As part of its ongoing supervision, the press release mentions that FIN-FSA required the Board of Directors of undertakings to consider the findings and submit to FIN-FSA a copy of the Board minutes regarding the measures that will be taken to rectify the situation together with a timeframe by when this will be completed. Significant non-compliance by individual insurance company were to be looked into more detail through on-site inspections.</p> <p>KNF (PL)</p>

No.	Topic of the best practice	NSA/Country	Best practice identified during the reference period
			<p>From 2016 to 2017, KNF performed a thematic review for all undertakings that indicated in their RAF (Risk Assessment Framework for Undertakings) to have outsourcing arrangements in place in 2015. The review was carried out in terms of compliance with the requirements of the relevant Polish regulatory framework, the Commission Delegated Regulation (EU) 2015/35 and EIOPA Guidelines on System of Governance. The thematic review covered both cases – where the undertaking had submitted their outsourcing policy to the KNF on its own initiative and where the undertaking had not submitted their policy. In the latter case, the KNF requested the undertaking to submit its outsourcing policy and to provide explanations for not providing it once the Polish Act of 11 September 2015 on the business of insurance and reinsurance entered into force (transposing Solvency II). The supervisory team assessed whether undertakings complied with all the requirements, including as regards the determination of critical and important functions being outsourced. Comments and observations were addressed to undertakings in case of inaccuracies, lack of information vis a vis the outsourcing policies or in case of non-compliance with the legal requirements. Undertakings were required to provide a response to the findings of the KNF and to change their outsourcing policies when necessary in order to comply with regulatory requirements.</p>

ANNEX 4 – OVERVIEW ACTIONS FOR EIOPA

As a result of the peer review EIOPA will take actions in 2 domains: (i) the practice to grant, to an insurance intermediary, who is not an employee of the undertaking, authority to underwrite business or settle claims in the name and on account of an undertaking; (ii) and the definition of material development and the adequate timeline for its notification. For additional details, please see below.

OUTSOURCING FRAMEWORK – DEFINITIONS AND RULES ON CERTAIN TYPE OF OUTSOURCING

1. Lack of clarity and harmonization across NSAs in relation to the meaning of corporate substance -

The majority of jurisdiction do not have a requirement/a supervisory expectation aimed at keeping the management and control activities within the undertakings. In addition, there is an overall lack of clarity and harmonization in relation to the meaning of corporate substance both in terms of the communication to the market and in how the subject is supervised by NSAs. This may result potential risks of un-level playing field and regulatory arbitrage.

EIOPA will consider developing guidance to assist NSAs to ensure corporate substance of undertakings and allow identification of empty shells.

OUTSOURCING FRAMEWORK – DEFINITION AND RULES ON CERTAIN TYPE OF OUTSOURCING

2. Lack of convergence, across NSAs, on the distinction between the activity of (re)insurance distribution and the outsourcing to an intermediary (being not an employee of the undertaking) of delegated authority to underwrite and/or settle claims in name and on account of the outsourcing undertaking

The practice to grant delegated authority to intermediaries (this is, when an insurance intermediary, who is not an employee of the undertaking, is given delegated powers or authority to underwrite business or settle claims in the name and on account of an undertaking) is a relevant activity in several EEA Member States and it is mainly, but not only, used by undertakings performing cross-border activities in more than one EEA Member State. Such undertakings may not have a direct knowledge of the insurance market where they wish to operate and therefore leverage the knowledge of the intermediary/service provider. In certain EEA Member States, these activities (underwriting and settling claims) may be outsourced to specific service providers commonly designated as managing general agents. The peer review highlighted that there is not a convergent approach as regards the supervisory treatment of underwriting business or settling claims in the name and on account of an (re)insurance undertaking. In fact, three different approaches by NSAs currently take place:

- a) Where there is outsourcing by an (re)insurance undertaking, with delegated powers or authority to the service provider, the NSA expects that such is considered by the (re)insurance undertakings as outsourcing of a CIF;
- b) the NSA expects that the (re)insurance undertaking considers such arrangements as outsourcing of a CIF using a risk-based approach, on the basis of a materiality threshold, applied to the delegation of powers or authority to the service provider (in this case, the PRC would expect that the NSA provides guidance to the market); and
- c) the NSA does not allow the outsourcing of the underwriting function. Therefore, (re)insurance undertakings cannot give delegated powers or authority to a third party in relation to underwriting.

Furthermore, as regards scenarios b) and c) above, business emanating from delegated powers or authority to underwrite business or settle claims in the name and on account of an undertaking is treated differently across NSAs, both from an onboarding and ongoing monitoring perspectives. Not every NSA conducts a thorough review of the service providers with delegated authority to underwrite and settle claims on behalf of undertakings and the business that will be underwritten. This means that supervision of such business may be limited or non-existent in some cases. There are also instances where NSAs do not require to be notified. This is particularly relevant taking into account that the practice to grant the delegated authority to underwrite and settle claims on their behalf to service providers/intermediaries is mainly used by undertakings performing cross-border activities in more than one EEA Member State.

Moreover, the discussions between the PRC and NSAs revealed that, in some cases, the competent authorities are only broadly familiar with the concept of MGA, without being able to grasp all the specificities of such type of entity, which would be required for an effective supervision of the latter.

EIOPA will consider in the review of its Guidelines on System of Governance to develop further guidance to NSAs on how to differentiate between the activity of (re)insurance distribution and the outsourcing by an insurance undertaking, with delegated powers to the service provider, of the activities of underwriting and/or settling claims. It would also provide guidance on where the outsourcing of this function should be considered as outsourcing of a critical or important function or activity. Furthermore, EIOPA will reflect on possible approaches in order to raise awareness, including at the level of the European legislators if deemed necessary, on the need to the concept of MGA, in order to ensure convergence in the regulation and supervision of this type of entities.

NOTIFICATION PROCESS

3. Lack of convergence, across NSAs, regarding the understanding of what constitutes a material development of an outsourcing of a critical or important function or activity (CIF) and what should be understood as “timely notification” thereof

A material development regarding an CIF may increase significantly the risk of the undertaking’s activity and render the previous risk assessment and/or of the due diligence performed by the undertaking (performed in compliance with Article 49 of the Solvency II Directive and Article 274 of the Commission Delegated Regulation (EU) 2015/35) inaccurate or outdated.

In order to ensure that undertakings give proper consideration to material developments and to provide clarity to the market on when a notification of a material development should to be performed, it is important clarify what could constitute a material development in the context of outsourcing, also taking into account the market specificities. Not providing such clarity could result in an inadequate risk management by undertakings as well as in different notification practices by undertakings and potential risk in lacking of receiving important information by the NSAs.

Insurance and reinsurance undertakings shall, in a timely manner, notify the supervisory authorities prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities.

Departing from the explanation provided in paragraph 2.313 of the Final Report on Public Consultation No. 14/017 on Guidelines on system of governance, where examples of what could constitute a subsequent material change or development are provided, EIOPA will consider in the review of its Guidelines on System of Governance to develop further guidance to NSAs on what should be considered material development of crucial and/or important functions and activities. Departing from said report (which mentions 6 weeks) EIOPA will also assess what should be understood as a “timely” notification.

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