

Recommendation to the Комисия за финансов надзор on the supervisory assessment of the solvency position of insurance and reinsurance undertakings

EIOPA-BOS-24-521  
03 January 2025

## 1. INTRODUCTION AND LEGAL BASIS

1. In accordance with Article 16(1) of Regulation (EU) No 1094/2010<sup>1</sup> (EIOPA Regulation), EIOPA is issuing a recommendation to the Комисия за финансов надзор (the Financial Supervision Commission (FSC)) in Bulgaria. The FSC is a competent authority within the meaning of Article 4(2) of the EIOPA Regulation.
2. This Recommendation is based on Directive 2009/138/EC<sup>2</sup> (Solvency II Directive) and Commission Delegated Regulation (EU) 2015/35<sup>3</sup>.
3. Given that this Recommendation concerns a specific situation in the context of the supervisory review process of the FSC, EIOPA did not conduct open public consultation and did not request advice from the Insurance and Reinsurance Stakeholder Group.

## 2. BACKGROUND

4. The FSC was asked by the supervisory authority of a ceding insurance undertaking to provide information on the solvency of a Bulgarian reinsurance undertaking authorised by the FSC under Article 14 of the Solvency II Directive.
5. The request for a solvency verification followed the signing of a reinsurance agreement between the ceding insurance undertaking and the Bulgarian reinsurance undertaking. In this reinsurance agreement, the ceding insurance undertaking transferred almost all of its insurance liabilities and assets to the Bulgarian reinsurance undertaking as a reinsurance premium. The transferred assets included reinsurance recoverables for amounts expected to be recovered by the ceding insurance undertaking from a pool of EU and non-EU reinsurance undertakings (Reinsurance Pool).
6. The compliance of the Bulgarian reinsurance undertaking with the Solvency Capital Requirement (SCR) was crucial as in accordance with Article 211(2)(a) of Commission Delegated Regulation (EU) 2015/35, for a reinsurance agreement to be taken into account as a risk-mitigation technique in the basic SCR of the ceding insurance undertaking, the reinsurance undertaking has to be compliant with the SCR.
7. The FSC informed the supervisory authority of the ceding insurance undertaking that on the basis of a solvency simulation provided by the Bulgarian reinsurance undertaking, which was reviewed by the FSC for consistency, the Bulgarian reinsurance undertaking was compliant with the SCR.
8. The solvency simulation considered that the ceding insurance undertaking's rights to its reinsurance recoverables had been assigned to the Bulgarian reinsurance undertaking. Those reinsurance recoverables were recognised as assets in the Bulgarian reinsurance undertaking's financial position and the respective risk-mitigation effect was taken into account in the Bulgarian reinsurance undertaking's SCR computation.

---

<sup>1</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48-83).

<sup>2</sup> Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155).

<sup>3</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1–797).

9. To recognise the positive impact of the above-mentioned reinsurance recoverables in the financial and solvency position of the Bulgarian reinsurance undertaking, the FSC used as evidence the copies of notifications sent by the ceding insurance undertaking to some reinsurance undertakings part of the Reinsurance Pool. The FSC also considered the copy of the reinsurance broker's letter, which was addressed to the Bulgarian reinsurance undertaking indicating that it had notified the remaining reinsurance undertakings in the Reinsurance Pool. The reinsurance broker stated that at the moment of issuing the letter, it had not received any objections from the Reinsurance Pool with regards to the transfer of reinsurance recoverables.
10. Following a request for a breach of Union law investigation under Article 17 of the EIOPA Regulation, EIOPA has looked into the supervisory assessment of the FSC concerning the transfer of reinsurance recoverables. In this context, EIOPA contacted the relevant supervisory authorities of the EU reinsurance undertakings part of the Reinsurance Pool that were allegedly notified by the reinsurance broker.
11. EIOPA received feedback from those supervisory authorities. One of the reinsurance undertakings stated that it had not been notified. The other two reinsurance undertakings were notified by the reinsurance broker (one of them was informed just one day before the broker issued the letter to the Bulgarian reinsurance undertaking), but they had been waiting for further information or considered that an assignment does not modify the parties to a contract. Consequently, these reinsurance undertakings stated that that they had not been aware or had not provided consent to the transfer of reinsurance recoverables.

### 3. FINDINGS

12. According to Article 29 of the Solvency II Directive, supervision has to be based on a prospective and risk-based approach, and it has to include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.
13. According to Article 36 of the Solvency II Directive, supervisory authorities are required to review and evaluate the insurance or reinsurance undertakings compliance with the laws, regulations and administrative provisions adopted pursuant to the Solvency II Directive.
14. Against this background, it is EIOPA's view that there was not enough supporting evidence for the FSC to recognise the material positive impact of the reinsurance recoverables allegedly transferred from the ceding insurance undertaking in the financial and solvency position of the Bulgarian reinsurance undertaking.
15. The non-consideration of the recoverables concerning the reinsurance undertakings which provided feedback to EIOPA would lead to a situation with negative own funds in the Bulgarian reinsurance undertaking at the reference date of the verification of the solvency by the FSC.
16. In addition, the FSC's review for consistency did not challenge the application of the requirements on contract boundaries as defined in Articles 17 and 18 of Commission Delegated Regulation (EU) 2015/35, nor did it challenge how the non-life underwriting SCR was computed, considering the requirements in Article 116 of that Delegated Regulation.
17. As such, the FSC's review of the solvency simulation provided by the Bulgarian reinsurance undertaking was flawed. This failure meant that the supervisory authority of the ceding insurance undertaking could not apply Article 211(2)(a) of Commission Delegated Regulation

(EU) 2015/35. This could have provided an additional legal basis for supervisory intervention by the supervisory authority of the ceding insurance undertaking.

18. EIOPA concludes that the FSC did not properly fulfil its tasks in accordance with the requirements of the Solvency II Directive. The FSC's reviewed for consistency of a solvency simulation is deemed too superficial and not reflecting the due diligence expected from a supervisor when verifying the solvency of a supervised entity proportionate to the nature, scale and complexity of this situation.
19. It is worth adding that EIOPA and the competent authorities, including the FSC, defined and published the key characteristics of high-quality and effective supervision and one of the key principles of the Common supervisory culture is "challenging, sceptical, and engaged supervision". This requires supervisory authorities to question the undertakings' assessments and challenge their conclusions and decision-making processes.
20. Time constraints do not diminish the responsibilities of supervisory authorities who are required to take action on a risk-based basis in view of protection of policyholders and beneficiaries.
21. Against this background, the objective of this Recommendation under Article 16(1) of the EIOPA Regulation is to urge the FSC to review its supervisory review process for the assessment of the solvency position of insurance and reinsurance undertakings. In accordance with Article 29 of the Solvency II Directive, the FSC should ensure, under a prospective and risk-based approach proportionate to the nature, scale and complexity of the undertaking, the verification on a continuous basis of the compliance with the laws, regulations and administrative provisions adopted pursuant to the Solvency II Directive by insurance or reinsurance undertakings and groups.
22. EIOPA considered the use of alternative tools such as conducting an inquiry, a peer review and/or deploying other convergence tools. As the issue identified relates to a specific supervisory case which was closed in the meantime and concerns a gap in the supervisory review process of a specific supervisory authority, EIOPA considered that an individual recommendation under Article 16(1) of the EIOPA Regulation would be more appropriate, proportionate and suitable to ensure efficient and effective supervisory practices and to promote the common, uniform and consistent application of Union law.

#### 4. RECOMMENDATION

23. The FSC should revise its supervisory review process with regard to the verification of the solvency position of insurance or reinsurance undertakings and groups to ensure, under a prospective and risk-based approach proportionate to the nature, scale and complexity of the undertaking, the compliance on a continuous basis with the Solvency II Directive's solvency requirements.
24. The review of the solvency position of an insurance or reinsurance undertaking is a crucial task of every supervisor which cannot be based on a plain consistency check, but instead entail, following a risk-based approach proportionate to the nature, scale and complexity of the undertaking, a proper challenge of the insurance or reinsurance undertakings and groups' conclusions. For that purpose, the FSC should obtain adequate supporting evidence, where necessary.

25. Where provided with third parties' information, the FSC should conduct a proper verification of the accuracy of that information on a risk-based basis proportionate to the nature, scale and complexity of the undertaking.

## 5. COMPLIANCE AND REPORTING RULES

26. This document contains recommendations issued under Article 16(1) of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities are required to make every effort to comply with guidelines and recommendations.
27. The FSC should confirm to EIOPA whether it complies or intends to comply with this Recommendation, with reasons for non-compliance, within two months after the issuance of the translated version thereof.
28. In the absence of a response by this deadline, the FSC will be considered as non-compliant to the reporting and reported as such.

Done at Frankfurt am Main, on 3 January 2025



*For the Board of Supervisors*

Petra Hielkema

Chairperson

**EIOPA**

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt – Germany

Tel. + 49 69-951119-20

[info@eiopa.europa.eu](mailto:info@eiopa.europa.eu)

<https://www.eiopa.europa.eu>