Recommendation to the Národná banka Slovenska on actions necessary to comply with Directive 2009/138/EC

[redacted]

EIOPA-BoS-22-293
16 May 2022

European Insurance and Occupational Pensions Authority

1. INTRODUCTION AND LEGAL BASIS

1. In accordance with Articles 8(2)(d) and 17(3) of Regulation (EU) No 1094/2010[1] (EIOPA Regulation), EIOPA is issuing a recommendation to the Národná banka Slovenska (NBS). The NBS 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[2] (Solvency II Directive), EIOPA's Guidelines on supervisory review process, EIOPA's Common Supervisory Culture booklet and EIOPA's Supervisory Statement on supervisory practices and expectations in case of breach of the solvency capital requirement.

3. When investigating an alleged breach or non-application of Union law, EIOPA acts in accordance with the Rules of Procedure on investigations regarding breach of Union law (EIOPA-BoS-11-017-REV3).

2. INVESTIGATIVE PROCEDURE

4. Pursuant to Article 17(1) of the EIOPA Regulation where a competent authority has not applied the acts referred to in Article 1(2) or has applied them in a way which appears to be a breach of Union law, EIOPA shall act and use its powers provided under this article. This article also refers to cases where the competent authority failed to ensure that a financial institution satisfies the requirements laid down in the acts referred to in Article 1(2) of the EIOPA Regulation.

5. In the case of an alleged breach or non-application of Union law, EIOPA may launch an investigation upon request from a competent authority, the European Parliament, the Council, the Commission, the relevant stakeholder group, or on its own initiative and after having informed the competent authority concerned.

6. On 17 March 2022, EIOPA, on its own initiative, opened an investigation into whether the NBS applied its supervisory powers appropriately, in accordance with the Solvency II Directive.

7. On 17 March 2022, together with the notification regarding the start of the investigation, a draft investigation report, including a draft recommendation was shared with the NBS.

8. On 30 March 2022, EIOPA's Board of Supervisors established a panel in accordance with Article 41(2) of the EIOPA Regulation (Panel) to consider the case and to establish whether the NBS had committed a breach of Union law.

[1] 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)

[2] 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) (OJ L 335, 17.12.2009, p. 1)

9. On 31 March 2022, the NBS provided its opinion on the findings of the investigation and the draft recommendation.

10. On 6 April 2022, a conciliation meeting took place between the Panel and the NBS to try to reach an agreement on compliance actions necessary to restore compliance with Union law.

11. The Panel convened on 8 April 2022 to discuss this matter. The Panel duly took into account the information and explanations provided by the NBS and revised the analysis and conclusions accordingly.

12. On 22 April 2022, the Panel decided, by consensus, to approve EIOPA's revised investigation report and send a draft recommendation to the NBS.

13. Within the right to be heard, on 27 April 2022, the NBS provided its response. The NBS considered that it had acted properly and efficiently based on the situation and the evidence available at the time and had applied its powers in a timely and proportionate manner in accordance with EU law.

14. Having considered the NBS' response, on 3 May 2022, the Panel decided, by consensus, to propose substantially the same recommendation (with accepting the NBS' non-substantial text suggestions to the factual background) for approval for EIOPA's Board of Supervisors.

3. BACKGROUND

15. NOVIS Insurance Company, NOVIS Versicherungsgesellschaft, NOVIS Compagnia di Assicurazioni, NOVIS Poisťovňa a.s. (NOVIS) is a life insurance undertaking established in 2013 in Slovakia and supervised by the NBS. Besides its home market, NOVIS is present through freedom of establishment in Austria, Czechia and Germany and through freedom to provide services in Finland, Hungary, Iceland, Italy, Lithuania, Poland and Sweden.

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20. The joint on-site report was finalized in September 2020, which served as a basis for the NBS' on-site report, officially named as the Protocol. The Protocol was delivered on 21 October 2020 to NOVIS to exercise its right to be heard.

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26. On 23 November 2020, NOVIS submitted its objections to the Protocol [redacted]

27. On 24 November 2020, NOVIS replied to the NBS' request of 22 October 2020 [redacted]

28. On 8 December 2020, the NBS addressed the objections raised by NOVIS [redacted]

29. On 19 January 2021, the NBS provided a final report about the findings of the joint on-site inspection (Final Protocol) to NOVIS. [redacted]

30. On 16 February 2021, NOVIS replied to the Final Protocol and to the NBS' request of 8 December 2020 regarding the short-term finance scheme and recovery plan. [redacted]

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40. On 29 July 2021, the NBS advised NOVIS that it is necessary to ascertain the capital position of NOVIS as at 30 June 2021 [redacted]

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47. On 7 February 2022, NOVIS delivered the Quantitative Reporting Templates (QRT) for Q4 2021 [redacted]

48. On 23 February 2022, NOVIS delivered [redacted] an analysis outlining the rationale for dissolving its deferred tax liability. [redacted]

49. On 15 March 2022, NOVIS submitted recalculation of MCR/SCR [redacted]) for end 2021 [redacted]

[6] The decision was appealed by NOVIS and is subject to the review of the NBS' Board as appeal body.

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4. ANALYSIS AND CONCLUSIONS

56. During the investigation, EIOPA examined whether the NBS applied the provisions of Union law correctly.

57. This assessment focused on the application of the rules relating to non-compliance with technical provisions, SCR and MCR as laid down in Articles 76 and 136 to 144 of the Solvency II Directive. In this context, EIOPA looked into whether the NBS applied its supervisory powers in accordance with the requirements of Articles 29, 34 and 144 of the Solvency II Directive.

[redacted]

58. The adequacy of the calculation of technical provisions is of crucial importance from a supervisory standpoint, since technical provisions represent the amounts set aside by an insurance or a reinsurance undertaking to settle its insurance and reinsurance obligations towards policyholders and beneficiaries of insurance or reinsurance contracts.

59. An inaccurate valuation of technical provisions has the potential to distort the financial position of the undertaking in a very substantial manner, given that they usually constitute the largest component of its liabilities. The leverage effect in the undertaking's Solvency Balance Sheet means that even a small underestimation of technical provisions has the potential to materially increase the amount of own funds available to meet its SCR. This is because the excess of assets over liabilities directly affects the amount of eligible own funds through the reconciliation reserve, which is included as part of the best quality capital (Tier 1).

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81. First and foremost, the main objective of supervision is the protection of policyholders and beneficiaries as declared in Article 27 of the Solvency II Directive[11]. This objective means that a similar level of protection should be provided to policyholders and beneficiaries across jurisdictions regardless of the location of the insurance undertaking's head office.

82. As stated in Article 29(1)[12], the Solvency II Directive introduced a prospective and risk-based supervision. The evolvement of insurance supervision has moved forward from compliance-based supervision. Besides the verification of compliance with Solvency II rules, supervisory authorities need to look at and assess current and new emerging risks of insurance markets and individual undertakings. If needed, they should intervene at an early stage in order to minimise disruption or loss on the part of policyholders and beneficiaries. This can only be done through a forward-looking, preventive and proactive approach that concentrates on how to best identify and tackle, in a timely and effective manner, emerging risks for policyholders and beneficiaries.

83. To support risk-based supervision, Article 34(1) of the Solvency II Directive[13] provides that supervisory authorities are required to take preventive and corrective measures to ensure that undertakings comply with the laws, regulations and administrative provisions concerning their insurance activity. Under paragraph 2 of that article[14], supervisory authorities need to

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[11] "*Member States shall ensure that the supervisory authorities are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision, namely the protection of policy holders and beneficiaries.*"

[12] "*Supervision shall be based on a prospective and risk-based approach. It shall 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] "*Member States shall ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they have to comply in each Member State*."

[14] "*The supervisory authorities shall have the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative, management or supervisory body*."

have the power to take any necessary measures, including administrative or financial measures with regard to insurance or reinsurance undertakings and the members of their administrative, management or supervisory body. In addition, paragraph 6 of that article[15] provides that supervisory powers are to be applied in a timely and proportionate manner.

84. As stated in Guideline 36 of [EIOPA's Guidelines on supervisory review process], supervisory authorities should take measures that vary according to the level of significance of the weaknesses and the actual or potential deficiencies or cases of non-compliance faced by the insurance and reinsurance undertakings.

85. In this context, it is worth adding that EIOPA and the competent authorities, [redacted], defined and published the key characteristics of high-quality and effective supervision. One of the key principles of the [Common supervisory culture] is "conclusive supervision". This requires supervisory authorities to draw conclusions and follow up on matters as soon as possible. Identified issues cannot be left without a proper conclusion and action plan, which is crucial to the mitigation of the risks identified.

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[15] *"Supervisory powers shall be applied in a timely and proportionate manner."*

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94. The Solvency II Directive provides concrete steps and mandatory deadlines for the undertakings and supervisory authorities to follow in case of a breach of capital requirements. The identification of the breach should be followed by a notification from the undertaking to its supervisory authority together with the submission of a short-term finance scheme or recovery plan for supervisory approval. Compliance should be restored within three or six-months in case of a MCR or SCR breach respectively. [redacted]

95. As stated in [EIOPA's Supervisory Statement on supervisory practices and expectations in case of breach of the solvency capital requirement](), if compliance with the SCR is not restored within a prescribed recovery period, the supervisory authorities should impose additional measures. These measures may vary depending on the specific situation and national laws and should be proportionate, taking into account in particular (i) the level of non-compliance with the SCR, (ii) the duration of the deterioration of the undertaking's financial conditions

[16] Under appeal.

and (iii) the sustainability of the applied measures by the undertaking to restore its solvency. These measures should always consider the interests of policyholders.

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4.4. EIOPA’s conclusions

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105. **Pursuing a step-by-step approach the NBS failed to take the necessary corrective measures in a timely and proportionate manner to address NOVIS' non-compliance and therefore the NBS is in breach of its obligations stemming from Union law, namely from Article 29(1) and Article 34(1), (2) and (6) of the Solvency II Directive. These breaches call for EIOPA's action in accordance with its powers laid down in Article 17 of the EIOPA Regulation. In view of restoring compliance with Union law, EIOPA addresses the following recommendations to the NBS:**

1. ***In accordance with EIOPA's conclusions set out in this Recommendation the NBS should adopt a position and verify and conclude on NOVIS' compliance with the decision on investment infringements of 19 April 2021 and the decision on technical provisions infringements of 14 January 2022 – based on the currently and short-term available information - within 45 calendar days upon the adoption of this Recommendation.***

2. ***The NBS should take the necessary steps and measures pursuant to Articles 76, 138, 139 and 141 of the Solvency II Directive to ensure NOVIS' compliance within the prescribed statutory deadlines as part of a full/integrated intervention strategy by the NBS that results in either a structural and sustainable recovery of all infringements, or if appropriate or mandatory, a withdrawal of NOVIS' authorisation under Article 144 of the Solvency II Directive.***

5. IMPLEMENTATION AND MONITORING

106. The NBS shall inform EIOPA within 10 working days of receipt of this Recommendation of the steps it has taken or intends to take to ensure compliance with Union law.

107. The information referred to above should be set out in a report explaining the measures taken or to be taken and clearly setting out when the NBS expects to comply with Union law, together with evidence of the actions taken and planned.

Done at Frankfurt am Main, on 16 May 2022

[signed]

For the Board of Supervisors

[redacted]

Chairperson

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