

DETAILED ACCOUNT AND EIOPA OPINION ON THE IMPACT OF INCREASED SIZE THRESHOLDS AS PART OF THE SOLVENCY II REVIEW ON INSURANCE UNDERTAKINGS IN SCOPE OF DORA

1. LEGAL BASIS

1. The European Insurance and Occupational Pensions Authority (EIOPA) provides this detailed account based on Article 9a of Regulation (EU) No 1094/2010 (EIOPA Regulation).
2. Where EIOPA considers that any of the legislative acts referred to in Article 1(2) of the EIOPA Regulation, or any delegated or implementing act based on those legislative acts raises significant exceptional issues pertaining to market confidence, consumer, customer or investor protection, the orderly functioning and integrity of financial markets or commodity markets, or the stability of the whole or part of the financial system in the Union, according to Article 9a(4) of the EIOPA Regulation, EIOPA shall without undue delay send such detailed account in writing to the competent authorities and the Commission of the issues it considers to exist.
3. In addition to this detailed account, EIOPA published and provided the Commission with an opinion, which sets out the action EIOPA considers appropriate to remedy the issue (Article 9a(4) of the EIOPA Regulation).

2. DESCRIPTION OF THE ISSUE

4. Insurance undertakings specified in Article 4 of Directive 2009/138/EC (Solvency II Directive) are excluded from the scope of that Directive due to their size. More specifically, Article 4(1) of the Solvency II Directive specifies that insurance undertakings which fulfil a set of conditions are exempted from the scope of application of the Solvency II Directive. This is without prejudice to national transposition.
5. Article 2(3)(b) of Regulation (EU) No 2022/2554 (DORA Regulation) includes a reference to Article 4 of the Solvency II Directive, which implies that the same insurance undertakings which are excluded from the scope of the Solvency II Directive due to their small size are also excluded from the scope of the DORA Regulation.
6. On 14 December 2023, the Council and the European Parliament reached a provisional agreement on a comprehensive review of the Solvency II Directive. With this review, the size thresholds defined in Article 4 of the Solvency II Directive will be increased, resulting in more insurance undertakings being excluded from its purview.
7. On 17 January 2025, the DORA Regulation will become applicable. Although the reviewed Solvency II Directive is not expected to be applicable until the end of 2026, insurance undertakings that meet the current size thresholds set out in Article 4 of the Solvency II Directive but do not reach the future revised size thresholds will be required to comply with the requirements of the DORA Regulation until the date of applicability of the revised Solvency II Directive. The applicable provisions to the

exempted undertakings, before and after the revised Solvency II Directive becomes applicable are however contingent on the national transposition of each Member State.

8. EIOPA has identified an urgent need to ensure consistent, efficient and effective supervisory practices between the scope of the Solvency II Directive and the DORA Regulation, reducing the burden for relatively small insurance undertakings, which would need to engage in disproportionate efforts to achieve and demonstrate compliance with all requirements within the DORA Regulation while being excluded from its scope of application as soon as the revised Solvency II Directive becomes applicable in two years. This is without prejudice to the right to application and authorisation under Solvency II in line with Article 4(5) of the existing Solvency II legislation.

Done at Frankfurt am Main, on 14 November 2024.

[signed]

For the Board of Supervisors

Petra Hielkema

Chairperson

ANNEX: EIOPA OPINION ON THE IMPACT OF INCREASED SIZE THRESHOLDS AS PART OF THE SOLVENCY II REVIEW ON INSURANCE UNDERTAKINGS IN SCOPE OF DORA

EIOPA-BoS-24/425
14 November 2024



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1. LEGAL BASIS

- 1.1. The European Insurance and Occupational Pensions Authority (EIOPA) has provided the Commission with a detailed account of the unintended impact of increased size thresholds as part of the review of Directive 2009/138/EC (Solvency II Directive) on insurance undertakings in scope of Regulation (EU) No 2022/2554 (DORA Regulation) on 14 November 2024. This detailed account was based on Article 9a(4) of Regulation (EU) No 1094/2010 (EIOPA Regulation).¹
- 1.2. Article 9a(4) of the EIOPA Regulation states that where EIOPA considers that any of the legislative acts referred to in Article 1(2) of the EIOPA Regulation, or any delegated or implementing act based on those legislative acts raises significant exceptional issues pertaining to market confidence, consumer, customer or investor protection, the orderly functioning and integrity of financial markets or commodity markets, or the stability of the whole or part of the financial system in the Union, EIOPA shall without undue delay send such detailed account in writing to the competent authorities and the Commission of the issues it considers to exist.
- 1.3. In addition to raising the issue with the competent authorities and the Commission, EIOPA may also provide the Commission with an opinion on any action it considers appropriate, in the form of a new legislative proposal or a proposal for a new delegated or implementing act, and on the urgency of the issue.
- 1.4. In accordance with Article 9a(4) of the EIOPA Regulation, EIOPA shall make its opinion public.
- 1.5. The Board of Supervisors has adopted this Opinion in accordance with Article 2(8) of its Rules of Procedure².

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.

² Decision adopting the Rules of Procedure of EIOPA's Board of Supervisors, available at: https://www.eiopa.europa.eu/system/files/2022-07/bos-rules_of_procedure.pdf.

2. DESCRIPTION OF THE ISSUE

- 2.1. Insurance undertakings specified in Article 4 of the Solvency II Directive are excluded from the scope of that Directive due to their size. More specifically, Article 4(1) of the Solvency II Directive specifies that insurance undertakings which fulfil a set of conditions are exempted from application of the Solvency II Directive. This is without prejudice to national transposition.
- 2.2. Article 2(3)(b) of the DORA Regulation includes a reference to Article 4 of the Solvency II Directive, which implies that the same insurance undertakings which are excluded from the scope of the Solvency II Directive due to their small size are also excluded from the scope of the DORA Regulation.
- 2.3. On 14 December 2023, the Council and the European Parliament has reached a provisional agreement on a comprehensive review of the Solvency II Directive. With this review, the size thresholds defined in Article 4 of the Solvency II Directive will be increased, resulting in more insurance undertakings being excluded from its purview.
- 2.4. On 17 January 2025, the DORA Regulation will become applicable. Although the reviewed Solvency II Directive is not expected to be applicable until the end of 2026, insurance undertakings that meet the current size thresholds set out in Article 4 of the Solvency II Directive but do not reach the future revised size thresholds will be required to comply with the requirements of the DORA Regulation until the date of applicability of the revised Solvency II Directive. The applicable provisions to the exempted undertakings, before and after the revised Solvency II Directive becomes applicable are however contingent on the national transposition by each Member State.

3. OPINION

- 3.1. Against the background described in the previous paragraph, EIOPA considers that without action the temporary application of the DORA Regulation to small insurance undertakings would raise significant exceptional issues pertaining to the orderly functioning and integrity of the insurance market and to market confidence (Article 9a(4) of the EIOPA Regulation).
- 3.2. EIOPA has identified an urgent need to adopt this opinion to provide the Commission with its view on possible actions and to further ensure consistent, efficient and effective supervisory practices in the context of the DORA Regulation. Those actions are aimed at reducing the burden for relatively small insurance undertakings, which would need to engage in disproportionate efforts to ensure compliance with the relevant requirements in the DORA Regulation while being excluded from its scope of application as soon as the revised Solvency II Directive becomes applicable two years later.
- 3.3. EIOPA considers the obligation for those relatively small insurance undertakings to comply with the DORA Regulation as disproportionate. This is because the DORA compliance process is expected to be both time-consuming and resource-intensive resulting in unneeded and unintended costs and administrative burdens. This statement should not diminish the importance of any insurance undertaking, regardless of its size, to be operationally resilient, but only points at the extensive DORA compliance process.
- 3.4. Additionally, EIOPA believes that including these relatively small insurance undertakings within the scope of the DORA Regulation would not significantly contribute to the regulation's primary objective of enhancing digital operational resilience in the European financial sector. This extensive compliance burden, without a proportionate benefit in terms of improved resilience, places an unnecessary strain on these companies.
- 3.5. From a legal perspective, neither EIOPA nor the competent authorities possess any power to waive the application of Union law. Consequently, EIOPA considers that the Commission should initiate an amendment of Union Law to address the issue. The Commission should prioritise a respective change in Union law accordingly.
- 3.6. In any case, EIOPA also considers necessary for competent authorities to implement a risk-based prioritisation of supervisory actions that considers a proportionate approach to relatively small low risk insurance undertakings concerning the compliance with the DORA Regulation. Considering the above, between the date of application of the DORA Regulation and the date of application of the amended Solvency II framework, EIOPA expects competent authorities not to prioritise supervisory actions based on the relevant requirements in the DORA Regulation in relation to these small insurance undertakings.

3.7. Without prejudice to the above, EIOPA stresses the importance of the DORA Regulation and adherence thereof for the financial sector as of 17 January 2025.

3.8. In this Opinion, EIOPA seeks to raise the issue for the consideration of the Commission. Moreover, EIOPA aims at providing transparency about the issue to the market and promoting coordinated action by competent authorities in relation to the obligation of those companies to comply with the provisions of the DORA Regulation.

4. PUBLICATION

4.1. This Opinion will be published on EIOPA's website.

Done at Frankfurt am Main, on 14 November 2024.

[signed]

For the Board of Supervisors

Petra Hielkema

Chairperson