

OPINION

EIOPA opinion on a delegation agreement
between Dirección General de Seguros y
Fondos de Pensiones and De
Nederlandsche Bank N.V. under Article 28
of the EIOPA Regulation

EIOPA-BoS-23/254
04 July 2023

OPINION ON A DELEGATION AGREEMENT BETWEEN DIRECCIÓN GENERAL DE SEGUROS Y FONDOS DE PENSIONES AND DE NEDERLANDSCHE BANK N.V. UNDER ARTICLE 28 OF THE EIOPA REGULATION

1. LEGAL BASIS

- 1.1. The European Insurance and Occupational Pensions Authority (EIOPA) provides this Opinion on the basis of Article 8(1)(c) and Article 28 of Regulation (EU) No 1094/2010¹, (hereinafter “the EIOPA Regulation”). Articles 8(1)(c) and 28(2) of the EIOPA Regulation mandate EIOPA to stimulate and facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.
- 1.2. Competent authorities may delegate tasks and responsibilities to other competent authorities. As regards the delegation of responsibilities, it results in the reallocation of competences laid down in the acts referred to in Article 1(2) of the EIOPA Regulation. In this case, the law of the delegate authority governs the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.
- 1.3. At least one month before a delegation agreement is intended to take effect, the competent authorities need to notify EIOPA of their intention to conclude such a delegation agreement. In accordance with Article 28(4) of the EIOPA Regulation, EIOPA may give an opinion on the intended agreement within 1 month of being informed.
- 1.4. EIOPA publishes, by appropriate means, any delegation agreement as concluded by the competent authorities, in order to ensure that all parties concerned are informed appropriately.
- 1.5. This Opinion is addressed to Dirección General de Seguros y Fondos de Pensiones (hereinafter “DGSFP”) and to De Nederlandsche Bank N.V. (hereinafter “DNB”) as competent authorities in the sense of Article 4(2) of the EIOPA Regulation.
- 1.6. 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 (OJ L 331, 15.12.2010, p. 48).

² Decision adopting the Rules of Procedure of EIOPA’s Board of Supervisors, available at: https://www.eiopa.europa.eu/sites/default/files/publications/administrative/bos-rules_of_procedure.pdf.

2. CONTEXT AND OBJECTIVE

- 2.1. DGSFP as delegating authority and DNB as the delegate notified EIOPA on 26 May 2023 of their intention to conclude a delegation agreement pertaining to the tasks and responsibilities of group supervision.
- 2.2. Aegon N.V. is the ultimate parent undertaking of Aegon N.V. Group (hereinafter “the Group”) with its legal seat in the Netherlands, and therefore currently under supervision of DNB as Group Supervisor. The Group announced an agreement to transfer all its Dutch insurance entities to ASR Nederland N.V., an insurance holding company with its legal seat in the Netherlands. Once this transaction is concluded, the Group intends to move its legal seat to a third country. Since it is foreseen that the change of the legal seat of the Group (re-domiciliation) will happen after the transfer of the shares in the Dutch insurance entities, a period between the transfer of shares and the re-domiciliation will occur (hereinafter “interim period”).
- 2.3. During the interim period, the Group will have its legal seat still in the European Union, with no insurance activities in the Netherlands, while the insurance undertaking with the largest balance sheet total within Europe will be in Spain. Therefore, in accordance with Article 247(2) of Directive 2009/138/EC (hereinafter “Solvency II Directive”), DGSFP will be the Group Supervisor of the Group during the interim period.
- 2.4. DGSFP and DNB believe that from a supervisory perspective it is not desirable that DGSFP becomes the Group Supervisor for only a limited time. Therefore, they believe it is appropriate that DNB continues to carry on the tasks and responsibilities of group supervision for reasons of economies of scale, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. In particular:
 - DNB has long standing knowledge of the Group and its international structure, that includes insurance undertakings located both within and outside the European Union and has established bilateral relations with the insurance supervisors of the Group;
 - DNB has full knowledge of the partial internal model that the Group uses;
 - the insurance undertakings under supervision of DGSFP have not been part of the core business of the Group and these undertakings would amount for less than 0.5% of the total assets of the insurance undertakings of the Group after merger. Therefore, DGSFP is not familiar with the core market of the Group outside the European Union.
- 2.5. The delegation agreement is intended to apply during the interim period that is estimated to be limited and foreseen to last three months. Taking into account the possibility that the interim period might last longer, the delegation agreement provides delegation of the tasks and responsibilities of group supervision for a maximum period of six months. This period will be used for knowledge transfer and DGSFP’s preparation for taking over all tasks and responsibilities of group supervision in case the interim period lasts longer than six months.
- 2.6. DGSFP and DNB informed EIOPA that the delegation agreement is intended to take effect when the following conditions are fulfilled (i) it has been signed by DGSFP and DNB, (ii) the Group has transferred to ASR Nederland N.V. all its shares in the insurance undertakings with their legal seat

in the Netherlands; and (iii) the Group has publicly announced its intention to move its legal seat. The delegation agreement is automatically terminated when one of these conditions is first fulfilled: (i) the re-domiciliation of legal seat of the Group to a third country is completed; or (ii) six months have elapsed since the delegation agreement entered into force.

- 2.7. DGSFP and DNB notified EIOPA that they have complied with the conditions set out in Article 28 of EIOPA Regulation, including that the intended delegation agreement is in accordance with their respective national legal framework and applicable Union law.

3. CONTENT OF THE OPINION

3.1. In accordance with Article 247(2) of the Solvency II Directive, DGSFP is the Group Supervisor of the Group during the interim period.

3.2. As stated in Recital 38 of the EIOPA Regulation, the delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, to foster cooperation and thereby streamline the supervisory process, as well as to reduce the burden imposed on financial institutions. A reallocation of responsibilities would be appropriate for reasons of economies of scale, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities.

3.3. In its assessment of the intended delegation agreement, in line with EIOPA's role to facilitate and monitor delegation agreements between competent authorities by all appropriate means, EIOPA has considered the following points:

- i. the legal basis as recalled above;
- ii. the reasons provided by DGSFP and the DNB for the delegation, namely:
 - a. DNB's long-standing knowledge of the Group and its international structure within and outside of the European Union,
 - b. the limited size of the insurance undertakings under supervision of DGSFP and the limited knowledge of DGSFP on core markets of the Group outside the European Union,
 - c. optimal use of technical expertise, in particular on internal model supervision,
 - d. given the limited interim period, optimal use of resources needed for group supervision;
- iii. proportionality (i.e. delegation is a suitable, necessary and proportionate tool to achieve the legitimate objectives);
- iv. the limited period of maximum 6 months for the delegation;
- v. the framework and conditions for the application of the Delegation Agreement, including the conditions of entry into force and expiry of the Delegation Agreement as well as the conditions for the implementation of the Delegation Agreement (including but not limited to the distribution of tasks and responsibilities, the circumstances for the suspension and force majeure, the law applicable to the Delegation Agreement and the settlement of disputes).

EIOPA notes that the delegation agreement is intended to ensure efficient, effective and consistent supervision, and a smooth hand-over of the tasks and responsibilities of group supervision, if needed, in view of adequate protection of the policyholders of the Group.

4. CONCLUSION

- 4.1. Against this background, EIOPA is of the opinion that the delegated supervisory competences are duly identified and precisely determined in accordance with relevant Union laws. Considering the specificities of the case at hand (i.e. transfer of tasks and responsibilities of the Group Supervisor for a limited time of six months), the proposed delegation agreement supports the efficient, effective and consistent supervision of the Group. A delegation limited in time for the interim period is an effective, suitable, and necessary tool to achieve these objectives. Therefore, the intended delegation agreement is justified and proportionate.
- 4.2. After the termination of the delegation agreement and if needed, DGSFP is expected to automatically resume all tasks and responsibilities related to the group supervision of the Group.
- 4.3. DNB and DGSFP should keep EIOPA informed on the developments concerning the Group and are expected to ensure proper execution of the delegation agreement and compliance with Union law.
- 4.4. This Opinion will be published on EIOPA's website in accordance with Article 8(1)(k) of EIOPA Regulation.

Done at Frankfurt am Main, on 4 July 2023.

[signed]

For the Board of Supervisors

Petra Hielkema

Chairperson