

**FEEDBACK STATEMENT FROM
COMMENTS RECEIVED ON THE
STATEMENT ON SUPERVISORY
PRACTICES AND EXPECTATIONS
IN CASE OF BREACH OF THE
SOLVENCY CAPITAL
REQUIREMENT**

EIOPA-BoS-21/282
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eiopa

European Insurance and
Occupational Pensions Authority

Introduction

EIOPA would like to thank all the participants of the public consultation for their comments on the draft Statement on supervisory practices and expectations in case of breach of the Solvency Capital Requirement.

The input received provided important guidance for EIOPA to finalise the Supervisory statement. All of the comments submitted were given careful consideration by EIOPA. The individual comments received and EIOPA's response to them are published as a separate document.

Aim and rationale of the Supervisory statement

The Supervisory statement aims to enhance supervisory convergence by focussing on the application of supervisory ladder as set out in the Delegated Regulation (Commission Delegated Regulation (EU) 2015/35), in particular addressing the recovery plan required in case of breach of the SCR¹.

The statement is addressed to the national supervisory authorities and is developed to be applicable in any circumstance. However, one specific paragraph is included addressing supervisory expectations on recovery plans to be developed in the context of the Covid-19 pandemic.

The Supervisory statement does not add any new requirements or create administrative burden. Given the fact that the ongoing uncertainty (or similar future events) could lead to breaches of SCR in the future, the guidance included in the statement should promote the convergence of national supervisory practices also to ensure consistency in the way the recovery plans are developed, assessed and approved.

In this spirit the guidance included doesn't preclude the supervisory authorities from triggering a supervisory dialogue with undertakings at any time if it is deemed appropriate considering the risk-based approach.

Main comments received and how EIOPA addressed them

Legal hook

The majority of the stakeholders expressed doubts regarding the addressee of this supervisory statement due to the reference made also to insurance and reinsurance undertakings within the document.

EIOPA is underlining that that the Supervisory Statement is based on Directive 2009/138/EC (Solvency II) and is addressed to the competent authorities with the aim to foster supervisory convergence in the area of the application of supervisory ladder. Indeed, there are a number of additional clarifications in the area of the

¹ The cases of exceptional adverse situation and the extension of recovery period under Article 138(4) of Solvency II are out of the scope of this Supervisory Statement.

application of supervisory ladder which the experience has shown to be needed (e.g. the date of non compliance) and were clarified in this supervisory statement.

The document sets supervisory expectations which translate ultimately on undertakings. Therefore, as in other documents, and considering that the document is based on requirements imposed to undertakings in Solvency II Directive, the drafting chosen refers to undertakings.

It is EIOPAs duty to contribute to high quality common supervisory standards and practices in particular by providing statements on the basis of Article 29(2) of Regulation (EU) No 1094/2010.

Scope

Stakeholders argued that there is no need to dedicate a paragraph to the application of supervisory ladder in the current situation caused by the outbreak of Covid-19. EIOPA has further highlighted that, even if the trigger event for this supervisory statement was clearly the out break of Covid-19 pandemic², the Supervisory Statement is developed to be applicable in any circumstance.

A number of stakeholders asked to explicitly highlight in the statement that it should only address situations where the SCR is not covered. EIOPA has not taken on board this comment and has further clarified that in accordance with Article 138 of the Solvency II Directive a non-compliance with the SCR starts when the SCR ratio is below 100%. However, intensified supervision may and should indeed start before, at least when a risk of breaching the SCR in the next 3 months is observed, according to the same article in order to implement a preventive and forward-looking supervision.

Based on comments received from a number of respondents to the consultation paper it has been clarified in the paper that out of the scope of the supervisory statement are the cases of exceptional adverse situation and the extension of recovery period under Art. 138(4) of the Solvency II Directive.

The analysis of the causes for non-compliance should be done from the perspective of the undertaking considering any type of internal/ external causes (including Covid-19).

Observation of non-compliance

Stakeholders argued that using the on-going monitoring to identify the date of non-compliance with the SCR could potentially lead to evaluations not aligned with the quarterly/annual reporting. Respondents to the public consultation believe that the on-going monitoring figures should be used by the undertaking's management as early warning indicators. The start of the two-months period should be linked to the quarterly/annual reporting.

² This is the reason why one specific paragraph sets out expectation about the recovery plan submitted in the context of the Covid-19 pandemic.

EIOPA has clarified that, on the basis of Article 138(1) of the Solvency II Directive, that the date of non-compliance with the SCR should be considered as the date on which non-compliance with the SCR has been observed and communicated to the AMSB immediately through their on-going monitoring. Indeed, this has been shared as a practical experience among members which has improved the quality of the supervisory work and the further steps taken to safeguard the SCR of the company concerned. On the contrary, using the date of non-compliance based on quarterly/ annual reporting figures, may lead to delayed intervention measures and limited possibilities to restore compliance.

Request of a recovery plan under Article 138(2) of Solvency II

The majority of stakeholders welcomed the approach of supervisory authorities being able to consider that the submission of recovery plan is not needed, if the undertaking has adopted prompt recovery measures which restored compliance with the SCR within two months and these measures are considered by the supervisory authorities as adequate to preserve a sustainable solvency situation. There were however doubts raised by some stakeholders that there might be technical and operational issues to fully analyse the cause of the SCR breach for such a time period.

EIOPA is of the view that the recovery plan is an emergency plan and this should be reflected when analysing the causes for the non-compliance and in the preparation of the plan itself. The sustainable restore of the compliance with the SCR within two months and the positive consideration from the supervisory authority which allows not to submit a recovery plan also takes into account the proportionality principle.

Causes of non-compliance

A number of stakeholders argued that the recovery plan needs to be seen as an "emergency plan" for restoring SCR and the purpose must first and foremost be to accomplish this. Demanding a long assessment of causes for non-compliance could prolong the period of preparation of the plan too much which would not be in line with the Solvency II Directive (Article 138).

In this context EIOPA has slightly redrafted the text of the supervisory statement by adding a reference to 'key aspects of the causes of non-compliance and of any material shortcomings in the risk management system' and that the causes of non-compliance are expected to be assessed as part of the recovery plan or 'otherwise'. The new drafting already reflects the fact that the analysis should be focused on main causes and that there is no expectation for a detailed and time consuming analysis of the causes.

Assumptions and scenarios of the recovery plan

The main point raised by stakeholders with regard to the assumptions and scenarios of the recover plan was the reference to the application of the principle of proportionality.

EIOPA is of the view that the principle of proportionality has been already taken into consideration by referring to 'considering the principle of proportionality' when describing the assumptions and scenarios to be included in the recovery plan. Moreover supervisory authorities are in the best position to know the specific business models of each company on the market so the proportionality principle will already be embedded in their assessment.

Recovery measures

A number of stakeholders highlighted that the focus of the recovery measures should be on the re-establishment of the level of eligible own funds covering the SCR or the reduction of the risk profile to ensure compliance with the SCR within a required timeframe. Furthermore an argument was brought that the reference to the solvency position in a 'medium to long-term period' is vague and is not fully in line with the requirements of the Solvency II Directive.

EIOPA has noted the comments received and the reference to 'medium to long-term' has been replaced with 'sustainable' which gives the expression of a stable recovery. Further in paragraph 29 of the statement the reference to 'medium to long-term' has been also deleted.

Recovery period

Stakeholders shared the opinion that the maximum recovery period (nine months), laid down in Article 138(3) of the Solvency II Directive, in order to restore compliance is too restrictive and it would be preferable to extend it to twelve months at least which correspond to the length of accounting period or specific underwriting processes. Indeed, some recovery measures may last longer than nine months.

It was not possible to consider this comment on the supervisory statement as this proposal should be dealt rather in policy driven work, which is out of the scope of the current work.

Monitoring and non-compliance at the end of the recovery period

A number of stakeholders argued that the statement goes against Article 144 of the Solvency II Directive which states that supervisory authorities should withdraw the undertaking's authorisation when it does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is not adequate or the undertaking fails to comply with the approved scheme within three months from the observation of non-compliance with the MCR.

EIOPA has included a clarification that the supervisory statement assumes that the insurance or reinsurance undertaking complies with the Minimum Capital Requirement.