

SUPERVISORY STATEMENT ON SUPERVISORY PRACTICES AND EXPECTATIONS IN CASE OF BREACH OF THE SOLVENCY CAPITAL REQUIREMENT – IMPACT ASSESSMENT

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eiopa

European Insurance and
Occupational Pensions Authority

1. Introduction

1.1. According to Article 29(2) of the EIOPA Regulation¹, the Authority conducts, where appropriate, analysis of costs and benefits in the process of issuing opinions or tools and instruments promoting supervisory convergence. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

1.2. In the preparation of the Supervisory statement on supervisory practices and expectations in case of breach of the Solvency Capital Requirement, EIOPA took into consideration the general objectives of the Solvency II Directive, namely: adequate protection of policyholders and beneficiaries, being the main objective of supervision; financial stability; and proper functioning of the internal market.

1.3. The drafting of the Statement was also guided by EIOPA's statutory objectives, as reflected in the Regulation of the Authority, notably:

- improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
- ensuring the integrity, transparency, efficiency and orderly functioning of financial markets,
- preventing regulatory arbitrage and promoting equal conditions of competition,
- ensuring the taking of risks related to insurance, reinsurance and occupational pensions activities is appropriately regulated and supervised, and
- enhancing customer protection.

1.4 The supervisory practices addressing the supervisory ladder are necessarily flexible and should consider the specific situation of each insurance or reinsurance undertaking. However, it is important that when certain triggers are reached, such as non-compliance with the Solvency Capital Requirement (SCR), a minimum convergent approach is applied in order to foster supervisory convergence.

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. 48–83.

- 1.5 The aim of the Supervisory Statement is to promote supervisory convergence in the application of the supervisory ladder, in particular addressing the recovery plan required in case of breach of the SCR². The Supervisory Statement is developed to be applicable at any time. However, one specific paragraph is included addressing supervisory expectations on recovery plans to be developed in the context of the Covid-19 pandemic.
- 1.6. The Supervisory statement on supervisory practices and expectations in case of breach of the Solvency Capital Requirement was consulted publically between 25 November 2020 and 17 February 2021 where EIOPA IRSG commented on the document. This Impact Assessment is developed ex-post to [the public consultation](#) using also the input given by stakeholders.
- 1.7. To analyse the impact of the proposed supervisory convergence measures, the impact assessment foresees that a baseline scenario is applied as the basis for comparing supervisory convergence options. This helps to identify the incremental impact of each action considered in the supervisory statement. The aim of the baseline scenario is to explain how the current situation would evolve without additional intervention concerning a level playing field in the application of the supervisory ladder, in particular addressing the recovery plan required in case of breach of the SCR.

² 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.

2. Supervisory statement on supervisory practices and expectations in case of breach of the Solvency Capital Requirement – problem definition

2.1. In the impact assessment of the supervisory statement on supervisory practices and expectations in case of breach of the Solvency Capital Requirement EIOPA has duly analysed the costs and benefits of the main supervisory expectations included in the paper. These options are listed in the tables below.

Observation of non-compliance

Policy issue 1	Options
<p>1. To comply with Article 138(1) of Solvency II, information has to be sent immediately to the supervisory authority as soon as the non-compliance with the SCR requirements are observed</p>	<p>1.1 No further guidance</p> <p>1.2 Clarification that insurance and reinsurance undertakings should consider, as the date of non-compliance with the SCR, the date on which the non-compliance with the SCR has been observed through their own, ongoing monitoring. They are required to submit to the supervisory authorities a realistic recovery plan within two months upon the observation of a breach of the SCR. In case non-compliance being first detected by the supervisory authority, the date of the observation of a breach and therefore the required date for submitting a realistic recovery plan should be the date indicated by the supervisory authority in its notification to the concerned undertaking³.</p>

Analysis of the impacts of the review of adequacy of the measure proposed with regards to the observation of non-compliance

2.2. EIOPA focused on addressing the input from stakeholders to the targeted question from the public consultation of the supervisory statement on the measures foreseen with regards to the date of non-compliance with SCR.

Policy issue 1: To comply with Article 138(1) of Solvency II immediate information to be sent to supervisory authority as soon as observation of SCR not being complied with

³ Further in 'Comparison of options' referred to as 'Creating of level playing field'

Option 1.1: No further guidance		
Costs	Policyholders	The maintenance of the practice that in some cases the date considered was the date of notifying the supervisory authority could lead to delays in the recovery and ultimately endanger policyholder protection.
	Industry	No additional costs are expected as there is no further guidance on consideration of the date of non-compliance
	Supervisors	The maintenance of the practice that in some cases the date considered was the date of notifying the supervisory authority could lead to delays in the recovery and ultimately endanger policyholder protection, the main objective of supervisors.
	Other	N/A
Benefits	Policyholders	No material benefit is expected
	Industry	No material benefit is expected.
	Supervisors	No material benefit is expected.
	Other	N/A
Option 1.2: Clarification that insurance and reinsurance undertakings should consider, as the date of non-compliance with the SCR, the date on which non-compliance with the SCR has been observed through their own, on-going monitoring. They are required to submit to the supervisory authorities a realistic recovery plan within two months upon the observation of a breach of the SCR. In case non-compliance being first detected by the supervisory authority, the date of the observation of a breach and therefore the required date for submitting a realistic recovery plan should be the date indicated by the supervisory authority in its notification to the concerned undertaking.		
Costs	Policyholders	No material costs are expected.
	Industry	Some initial costs might be foreseen for some undertakings to adapt their systems in a way that ongoing monitoring figures can be used not only as 'soft tool' but as a way of calculation of SII figures earlier than quarterly/ annually. This would allow those undertakings to confirm the SCR breach and report to the supervisory authority.
	Supervisors	No costs are expected, as supervisors should be able to receive the information on SCR breaches based on the actual date of the SCR breach and not following any quarterly/ annual reporting matrix.
	Other	N/A
Benefits	Policyholders	Policyholders' protection would increase by considering the date of non-compliance with the SCR based on the ongoing monitoring figures of undertaking instead of waiting for the quarterly/ annual figures.
	Industry	This measure could save the undertaking from further non-compliance or regain sooner the SCR compliance if the breach was detected/ reported as early as possible.
	Supervisors	Supervisors would be able to enter in a dialogue with the concerned undertaking as early as possible which would give them more options to react and thereafter more chances to re-establish the undertaking's compliance with SCR.
	Other	N/A

- 2.3. With regards to option 1.1 some additional costs and lack of cost reductions are expected, as it keeps the status quo. Option 1.2 is considered to bring potentially additional costs (especially for undertakings which are using the ongoing monitoring only as a 'soft tool'), which are expected to adapt their systems in a way that more credible results based on SII figures could be extracted ad-hoc, not depending on quarterly/ annual reporting.
- 2.4. As far as impacts of possible changes are concerned, option 1.2 mainly implies IT rearrangements for systems and governance around the calculation. In addition, the initial costs for implementation of the proposals are foreseen to be incremental and *una tantum*.
- 2.5. According to the time horizon, the aforementioned costs are likely to impact mainly in the short-term the implementation in the IT systems.
- 2.6. In terms of expected benefits, option 1.2 is expected to have the value-added brought by immediate detection of the SCR non-compliance increasing the policyholder protection and the chances for recovery of the SCR for the undertaking. For supervisors, the immediate detection brings benefits through timely entering into a dialogue with the undertaking concerned and therefore more options to react on the breach.
- 2.7. Therefore, the approach chosen is to include further guidance as per option 1.2. with regards to the immediate information to be sent to supervisory authority as soon as observation of SCR not being complied with.

Evidence

- 2.8. The analysis is based on the work done in the context of drafting the supervisory statement:
- Work coordinated by EIOPA, including 17 members and COM within the Platform on the application of supervisory ladder;
 - Stakeholders' feedback during the public consultation of the Supervisory statement on supervisory practices and expectations in case of breach of the SCR.

Comparison of options

- 2.9. The preferred policy option for this policy issue is Option 1.2. as it is seen as a supervisory convergence issue where the legal framework is considered adequate.
- 2.10. The assessment of each option has taken into account the need for a risk-based and proportionate approach and the need to keep the flexibility of supervisory judgment while recognising that work under supervisory convergence is needed.
- 2.11. In the assessment of the options, also the efficiency is considered regarding the way in which resources are used to achieve the objectives.
- 2.12. The assessment of the effectiveness and efficiency are presented in the table below.

Policy issue 1: To comply with Article 138(1) of Solvency II immediate information to be sent to supervisory authority as soon as observation of SCR not being complied with

	Effectiveness (0/+ /++)		
Options	Objective 1: Effective and efficient supervision of (re)insurance undertakings and groups	Objective 2: Improving proportionality, in particular by limiting the burden for (re)insurance undertakings with simple and low risks	Objective 3: Improving transparency and better comparability
Option 1.1: No further guidance	0	0	0
Option 1.2: Creating level playing field	++	0	++
	Efficiency (0/+ /++)		
Options	Objective 1: Effective and efficient supervision of (re)insurance undertakings and groups	Objective 2: Improving proportionality, in particular by limiting the burden for (re)insurance undertakings with simple and low risks	Objective 3: Improving transparency and better comparability
Option 1.1: No further guidance	0	0	0
Option 1.2: Creating level playing field	++	0	+

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

Policy issue 2	Options
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<p>1. To comply with Article 138(2) of Solvency II, the undertaking has to adopt prompt recovery measures in order to restore compliance with the SCR</p>	<p>1.1 No further guidance</p> <p>1.2 Clarification that if the undertaking adopted prompt recovery measures, which restored compliance with the SCR within two months in a sustainable manner, considering as well the forward-looking perspective, the supervisory authority may consider that the submission of a recovery plan is not needed. At least, the undertaking has to engage in a supervisory dialogue and submit to the supervisory authority, within the same period of two months, relevant and adequate information to allow a proper assessment of the causes for the non-compliance, the solvency situation, including on the assumptions, scenarios and measures supporting the sustainability of the restored solvency position⁴.</p>
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Analysis of impacts of the review of adequacy of the measure proposed with regards to the request of a recovery plan under Article 138(2) of SII Directive

2.13. EIOPA focused on addressing the input from stakeholders to the targeted question from the public consultation of the supervisory statement on the measures foreseen with regards to the request of recovery plan under Article 138 (2) of SII Directive.

Policy issue 2: To comply with Article 138(2) of Solvency II, the undertaking has to adopt prompt recovery measures in order to restore compliance with the SCR		
Option 1.1: No further guidance		
Costs	Policyholders	Indirect costs from the additional costs imposed on industry.
	Industry	In some jurisdictions, additional cost on delivering a recovery plan when this is no longer adequate or proportionate.
	Supervisors	Costs related to the analysis of a recovery plan when such plan is no longer adequate or proportionate, and where supervision could focus on a different type of analysis.
	Other	N/A
Benefits	Policyholders	No material benefit is expected
	Industry	No material benefit is expected.
	Supervisors	No material benefit is expected.
	Other	N/A

⁴ Further in 'Comparison of options' referred to as 'Creating of level playing field'

Option 1.2: Clarification that if the undertaking adopted prompt recovery measures, which restored compliance with the SCR within two months in a sustainable manner, considering as well the forward-looking perspective, the supervisory authority may consider that the submission of a recovery plan is not needed. At least, the undertaking has to engage in a supervisory dialogue and submit to the supervisory authority, within the same period of two months, relevant and adequate information to allow a proper assessment of the causes for the non-compliance, the solvency situation, including on the assumptions, scenarios and measures supporting the sustainability of the restored solvency position.

Costs	Policyholders	No material costs are expected.
	Industry	No material costs are expected.
	Supervisors	No material costs are expected.
	Other	N/A
Benefits	Policyholders	Indirect benefits from the description for industry and supervisors.
	Industry	This approach would bring flexibility into situations where the insurer has been able to make fast and efficient actions in order to increase its solvency position. A market practice is to have well defined solvency ratio-based traffic lights with actions that can be executed efficiently. This approach would be very helpful in streamlining procedures in temporary crisis situations that can be easily recovered. It also promotes the use of the proportionality principle and would also limit the burden on undertakings in this position.
	Supervisors	Supervisors would be able to enter in a dialogue with the concerned undertaking at an early stage and limit the burden from reviewing detailed recovery plans of undertaking, which would have in the meantime already restored the SCR. This should allow supervisors to focus on relevant supervisory issues instead of formally approving a recovery plan when the situation is already recovered.
	Other	N/A

2.14. With regards to option 1.1 some additional costs and no cost reductions are expected as it keeps the status quo. It does not reduce unnecessary costs industry and supervisors currently have. Option 1.2 is also not considered of bringing any additional costs, even the opposite – limiting the requirement of a detailed recovery plan in case of a quick SCR recovery might even save costs for both undertakings and supervisors.

2.15. In terms of expected benefits, option 1.2 is expected to bring the value-added brought by the flexibility in situation when the insurer has achieved a fast and sustainable recovery of the SCR. This measure would also bring benefits in streamlining the procedures in temporary crisis situations. For the supervisors, the flexibility of not requiring a recovery plan in situations when there is a fast and sustainable recovery, limits the burden of reviewing detailed recovery plan of an undertaking which has already restored its solvency position and allow them to focus on more relevant supervisory issues.

2.16. Therefore, the approach chosen is to include further guidance as per option 1.2. with regards to the flexibility when requesting a recovery plan under Article 138(2) of the Solvency II Directive.

Evidence

2.17. The analysis is based on the work done in the context of drafting the supervisory statement:

- Work coordinated on EIOPA including 17 members and COM within the Platform on the application of supervisory ladder;
- Stakeholders' feedback during the public consultation of the Supervisory statement on supervisory practices and expectations in case of breach of the SCR.

Comparison of options

2.18. The preferred policy option for this policy issue is Option 1.2., as it is seen as a supervisory convergence issue where the legal framework is considered adequate.

2.19. The assessment of each option has taken into account the need for a risk-based and proportionate approach and the need to keep the flexibility of supervisory judgment while recognising that work under supervisory convergence is needed.

2.20. In the assessment of the options, also the efficiency is considered regarding the way in which resources are used to achieve the objectives.

2.21. The assessment of the effectiveness and efficiency are presented in the table below.

Policy issue: 2. To comply with Article 138(2) of Solvency II the undertaking to adopt prompt recovery measures in order to restore compliance with the SCR			
	Effectiveness (0/+/++)		
Options	Objective 1: Effective and efficient supervision of (re)insurance undertakings and groups	Objective 2: Improving proportionality, in particular by limiting the burden for (re)insurance undertakings with simple and low risks	Objective 3: Improving transparency and better comparability
Option 1.1: No further guidance	0	0	+
Option 1.2: Creating level playing field	++	++	0
	Efficiency (0/+/++)		

Options	Objective 1: Effective and efficient supervision of (re)insurance undertakings and groups	Objective 2: Improving proportionality, in particular by limiting the burden for (re)insurance undertakings with simple and low risks	Objective 3: Improving transparency and better comparability
Option 1.1: No further guidance	0	0	0
Option 1.2: Creating level playing field	++	++	++

Assumptions and scenarios of the recovery plan in the context of the Covid-19 pandemic

Policy issue 3	Options
1. Preparation of a recovery plan in accordance with Art. 142 of the Solvency II Directive in the context of the Covid-19 pandemic	<p>1.1 No further guidance</p> <p>1.2 Clarification that undertakings are expected to take into account additional specific points in the context of the Covid-19 pandemic, such as: (i) reflecting a possible economic downturn and its impact on the undertaking's business models in the economic scenarios and the business plans; (ii) considering evolvement of the Covid-19 pandemic; (iii) reflecting on possible new products launched and/or products stopped being commercialised or substantially changed in light of the Covid-19 pandemic in the valuation of liabilities⁵.</p>

Analysis of impacts of the review of adequacy of the measure proposed with regards to the assumptions and scenarios of the recovery plan in the context of the Covid-19 pandemic

2.22. EIOPA focused on addressing the input from stakeholders to the targeted question from the public consultation of the supervisory statement

⁵ Further in 'Comparison of options' referred to as 'Creating of level playing field'

on the measures foreseen with regards to the assumptions and scenarios of the recovery plan in the context of Covid-19 pandemic.

Policy issue 3: Preparation of a recovery plan in accordance with Art. 142 of the Solvency II Directive in the context of Covid-19 pandemic		
Option 1.1: No further guidance		
Costs	Policyholders	Indirect costs from the costs imposed on industry.
	Industry	Implicit costs if the assumptions and scenarios of the recovery plan in the context of Covid-19 pandemic are not well reflected, leading to delays in the approval and implementation of the recovery plan.
	Supervisors	Implicit costs if the assumptions and scenarios of the recovery plan in the context of Covid-19 pandemic are not well reflected, leading to delays in the approval and implementation of the recovery plan, impacting the protection of policyholders.
	Other	N/A
Benefits	Policyholders	No material benefit is expected.
	Industry	No material benefit is expected.
	Supervisors	No material benefit is expected.
	Other	N/A
Option 1.2: Clarification that undertakings are expected to take into account additional specific points in the context of the Covid-19 pandemic, such as: (i) reflecting a possible economic downturn and its impact on the undertaking's business models in the economic scenarios and the business plans; (ii) considering evolvement of the Covid-19 pandemic; (iii) reflecting on possible new products launched and/or products stopped being commercialised or substantially changed in light of the Covid-19 pandemic in the valuation of liabilities.		
Costs	Policyholders	No material costs are expected.
	Industry	Additional efforts may be needed in case further developments of the undertaking's systems are necessary to accommodate the above mentioned points.
	Supervisors	Additional efforts may be needed in case further developments of the supervisor's systems are required in order to be able to analyse the above mentioned points, including the scenarios delivered by the undertaking concerned.
	Other	N/A
Benefits	Policyholders	Better policyholder protection is expected as a benefit: as undertakings would take into account additional points in the development of the stress test and scenario analysis, which would allow them to foresee negative impacts on policyholders' side at early stage of the breach.
	Industry	The proposed measure would bring important insights to undertakings warning systems with regards to strong/ long-term negative impact of specific circumstances like Covid-19 pandemic, which could provide an indication about the sustainability and the horizon of the recovery (if possible). Clarity on supervisory expectations on this point will lead to swifter approvals and implementation of recovery plans.
	Supervisors	Supervisors would be able to assess the effect of the specific circumstances and base their decision also on the consideration of

		external circumstances affecting the recovery. Supervisors can also use the assumptions and scenarios received through the undertaking concerned for market wide exercises/ stress tests.
	Other	N/A

2.23. With regards to option 1.1 neither additional material costs nor cost reductions are expected as it keeps the status quo. Option 1.2 may bring additional costs only in cases where undertakings or supervisors need to develop IT systems in order to be able to accommodate the new parameters of the scenarios.

2.24. In terms of expected benefits, option 1.2 is anticipated to bring value-added by providing insights into the potential impact of the specific situation caused by Covid-19 pandemic for particular undertakings by stressing specific parameters that are relevant for the circumstances. This option would also help foreseeing negative impacts on policyholders' side at an early stage of a potential breach of SCR. It will also allow supervisors to assess the effects of the specific circumstances and base their decision also on the consideration of external circumstances affecting the recovery. Overall, clarity on supervisory expectations will lead to swifter approvals and implementation of recovery plans.

2.25. Therefore, the approach chosen is to include further guidance as per option 1.2. With regards to the preparation of the recovery plan in accordance with Art. 142 of the Solvency II Directive in the context of the Covid-19 pandemic.

Evidence

2.26. The analysis is based on the work done in the context of drafting the supervisory statement:

- Work coordinated on EIOPA including 17 members and COM within the Platform on the application of supervisory ladder;
- Stakeholders' feedback during the public consultation of the supervisory statement on supervisory practices and expectations in case of breach of the SCR.

Comparison of options

2.27. The preferred policy option for this policy issue is Option 1.2., as it is seen as a supervisory convergence issue where the legal framework is considered adequate.

2.28. The assessment of each option has taken into account the need for a risk-based and proportionate approach and the need to keep the flexibility of supervisory judgment while recognising that work promoting supervisory convergence is needed.

2.29. In the assessment of the options, also the efficiency is considered regarding the way in which resources are used to achieve the objectives.

2.30. The assessment of the effectiveness and efficiency are presented in the table below.

Policy issue: 3. Preparation of recovery plan in accordance to Art. 142 of the Solvency II Directive in the context of Covid-19 pandemic			
	Effectiveness (0/+ /++)		
Options	Objective 1: Effective and efficient supervision of (re)insurance undertakings and groups	Objective 2: Improving proportionality, in particular by limiting the burden for (re)insurance undertakings with simple and low risks	Objective 3: Improving transparency and better comparability
Option 1.1: No further guidance	0	0	0
Option 1.2: Creating level playing field	++	+	++
	Efficiency (0/+ /++)		
Options	Objective 1: Effective and efficient supervision of (re)insurance undertakings and groups	Objective 2: Improving proportionality, in particular by limiting the burden for (re)insurance undertakings with simple and low risks	Objective 3: Improving transparency and better comparability
Option 1.1: No further guidance	0	0	0
Option 1.2: Creating level playing field	++	+	++

EIOPA

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt – Germany

Tel. + 49 69-951119-20

info@eiopa.europa.eu

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