

EUROPEAN SYSTEMIC RISK BOARD

DECISION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 14 November 2018

on a coordination framework for consultation by a supervisory authority with the European Systemic Risk Board on an extension of the period under Article 138(4) of Directive 2009/138/EC of the European Parliament and of the Council (Solvency II)

(ESRB/2018/7)

(2019/C 36/10)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

Having regard to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board ⁽¹⁾, and in particular Article 3(2)(j) and Article 4(2) thereof,

Having regard to 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) ⁽²⁾, and in particular Article 138(4) thereof,

Whereas:

- (1) Article 138 of Directive 2009/138/EC establishes the rules and procedures in the event of a non-compliance or risk of non-compliance with the Solvency Capital Requirement (SCR). In these cases, specific procedures need to be followed to re-establish the level of eligible own funds covering the SCR or to reduce the insurance undertaking's or reinsurance undertaking's risk profile to ensure compliance with the SCR within a specified period.
- (2) In accordance with Article 138(4) of Directive 2009/138/EC, if the European Insurance and Occupational Pensions Authority (EIOPA) declares the existence of an exceptional adverse situation affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, the supervisory authority concerned may extend the recovery period for the affected undertakings by a maximum period of seven years.
- (3) Under Article 138(4) of Directive 2009/138/EC the supervisory authority concerned may consult with the European Systemic Risk Board (ESRB) with respect to the extension of the recovery period for undertakings affected by an exceptional adverse situation declared by EIOPA. A supervisory authority may decide on the need for, and the exact content of, the request for consultation with the ESRB regarding the extension of the recovery period.
- (4) The ESRB is responsible for macroprudential oversight within the Union. In this regard, the ESRB aims to contribute to the prevention and mitigation of systemic risks to financial stability in the Union, including risks that stem from outside the Union. Therefore, following its mandate, the ESRB's input should focus on the macroprudential aspects and impact of extending or not extending the recovery period for the affected undertakings. To the extent possible, the ESRB shall assess the impact on financial markets, other insurance or reinsurance undertakings and the real economy.
- (5) In order to facilitate the consultation process on the extension of a recovery period, it is necessary to set up a coordination framework within the ESRB. This coordination framework can benefit from the existing coordination framework under Decision ESRB/2015/4 of the European Systemic Risk Board ⁽³⁾ for the notification of national macroprudential policy measures by relevant authorities and the issuing of opinions and recommendations by the ESRB, which has been successfully tested on several occasions.

⁽¹⁾ OJ L 331, 15.12.2010, p. 1.

⁽²⁾ OJ L 335, 17.12.2009, p. 1.

⁽³⁾ Decision of the European Systemic Risk Board of 16 December 2015 on a coordination framework for the notification of national macroprudential policy measures by relevant authorities, the issuing of opinions and recommendations by the ESRB, and repealing Decision ESRB/2014/2 (ESRB/2015/4) (OJ C 97, 12.3.2016, p. 28).

- (6) Finally, in carrying out its assessment, the ESRB must involve the necessary level of expertise on insurance and reinsurance and ensure the close cooperation of the ESRB with EIOPA,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

This Decision establishes a common procedural framework for the consultation of the ESRB by a requesting authority on the extension of the recovery period under Article 138(4) of Directive 2009/138/EC.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (1) 'assessment team' means the team of experts of the ESRB responsible for performing an assessment and drafting a response to a request for consultation, which is a substructure of the Advisory Technical Committee;
- (2) 'Darwin' means the internal document management system of the ESRB;
- (3) 'ECB working day' means any day other than a Saturday, a Sunday or a public holiday in the ECB;
- (4) 'insurance undertaking' means an insurance undertaking as defined in Article 13 of Directive 2009/138/EC;
- (5) 'recovery period' means, in respect of an affected undertaking, the period referred to in Article 138(4) of Directive 2009/138/EC within which that undertaking must achieve the re-establishment of its level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement;
- (6) 'reinsurance undertaking' means a reinsurance undertaking as defined in Article 13 of Directive 2009/138/EC;
- (7) 'request for consultation' means a consultation addressed to the ESRB by a supervisory authority under Article 138(4) of Directive 2009/138/EC;
- (8) 'requesting authority' means a supervisory authority submitting a request for consultation;
- (9) 'supervisory authority' means a supervisory authority as defined in Article 13 of Directive 2009/138/EC.

Article 3

Procedure to prepare and approve a response to a request for consultation

1. Once a request for consultation has been received pursuant to Article 138(4) of Directive 2009/138/EC, the ESRB Secretariat shall immediately notify the members of the General Board, the Steering Committee and the assessment team via Darwin of such request.
2. Within ten ECB working days following the request for consultation, the assessment team shall prepare a draft response to the request for consultation which shall be submitted by the ESRB Secretariat to the Steering Committee for consideration via written procedure.
3. Within the timeline referred to in the previous paragraph, a member of the General Board may indicate, within the first two ECB working days following the notification of General Board, that its authority would like to participate in the assessment team, as an observer, if it is not yet represented.

4. The Steering Committee shall provide comments on the draft response within two ECB working days following its submission by the ESRB Secretariat. Substantial comments which have been provided by the Steering Committee shall be assessed by the assessment team and may be reflected in the draft response to the General Board.
5. Within four ECB working days following the date of submission of the draft response to the Steering Committee, the ESRB Secretariat shall submit the draft response to the General Board for comments. Within four ECB working days following the date of the submission of the draft response to the General Board, its members may provide comments prior to taking a General Board decision. In the absence of any substantial comments, the draft response to the request for consultation is deemed to be approved.
6. If substantial comments are provided by the General Board on the draft response, the assessment team shall consider whether the draft response should be revised in the light of those comments. Within four ECB working days of receipt of the comments from the General Board, the assessment team shall submit, via the ESRB Secretariat, the final draft response to the General Board.
7. Based on the final draft response prepared by the assessment team, the General Board shall take a decision on its approval. Unless a General Board meeting is convened in accordance with the Rules of Procedure of the ESRB (*), the decision by the General Board shall be taken by written procedure, within two ECB working days following the submission of the final draft response by the assessment team.
8. The timeline of the procedure for the response to the request for consultation may be shortened in exceptional circumstances on request by the requesting authority or if deemed necessary by the General Board.
9. In accordance with Articles 5(2a) and 13(7) of the Rules of Procedure of the ESRB, representatives of Iceland, Norway and Liechtenstein in the ESRB may be asked not to participate in the discussion of the draft response, unless the request for consultation has been submitted by the supervisory authority of their respective country.

Article 4

Information to be provided by a requesting authority

1. A request for consultation shall contain all the necessary information on which the response provided by the ESRB will be based and it shall specify the confidentiality requirements, if any, which apply to the transmission of that information.
2. A requesting authority shall provide the ESRB with information explaining the economic reasons supporting the extension of the recovery period and the expected overall economic implications of not extending the recovery period.
3. The information on the economic reasons supporting the extension of the recovery period shall include:
 - (a) data on the current financial situation and the interconnections of each affected insurance undertaking or reinsurance undertaking, including its investment exposures;
 - (b) additional information on items such as the structure of the insurance market, the main characteristics of the competitors and the distribution of the losses following the adverse event; and
 - (c) financial projections illustrating the potential recovery of each affected insurance undertaking or reinsurance undertaking under a set of different economic scenarios.
4. The information on the expected overall economic implications of not extending the recovery period shall include:
 - (a) the adverse impact on financial markets of each affected insurance undertaking's or reinsurance undertaking's strategy to reduce its risk profile including possible second round effects;
 - (b) the adverse impact on the real economy caused by, for example, among other things, a temporary disruption in insurance services as a result of the potential lack of substitutability or the possible negative effects on consumer confidence.

(*) Decision of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board (ESRB/2011/1) (OJ C 58, 24.2.2011, p. 4).

5. The Annex to the Decision details the minimum set of information to be provided by the requesting authority.
6. Notwithstanding paragraphs 4 and 5 above, the ESRB may require the requesting authority to provide further information if deemed necessary.
7. Unless the information provided is already in the public domain, the information received by the ESRB shall be deemed and treated as confidential, in accordance with Article 8(3) of Regulation (EU) No 1092/2010, and access to it shall be restricted to those persons and authorities that need to know in the course of their duties or performing their tasks.
8. The ESRB Secretariat shall set up a dedicated Darwin structure for information exchange with the requesting authority.

Article 5

Assessment team

1. The assessment team shall perform an assessment and draft a response to a request for consultation.
2. The composition of the assessment team shall be the same as the assessment team created under Decision ESRB/2015/4 as appointed by the General Board with the following differences:
 - a) the representative of the European Banking Authority (EBA) shall be replaced by a representative of EIOPA who will be appointed by the General Board; and
 - b) each authority represented in the assessment team may indicate one insurance expert that will act as an observer in the assessment team.
3. To avoid conflicts of interest in the preparation of a response to a request for consultation, the status of assessment team members and observers shall temporarily cease, without those members being replaced, for representatives of a supervisory authority which is a requesting authority.
4. The assessment team shall strive to reach consensus among its members, but where circumstances so require, the assessment team may provide a majority and a minority view assessment with the draft response it submits to the General Board.

Article 6

Confidentiality of the response to a request for consultation

The ESRB's response to a request for consultation shall not be public and shall be provided only to the requesting authority.

Article 7

Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 14 November 2018.

Francesco MAZZAFERRO
Head of the ESRB Secretariat
on behalf of the General Board of the ESRB

ANNEX

Information to be provided by a requesting authority**I. Information relating to the requesting authority**

- Name of the Supervisory Authority
- Member State
- Signatory of the request (Name, position, contact details)
- Contact person (Name, position, contact details)

II. Precise content of the request – scope of the request of consultation**III. Information related to each undertaking within the scope of the request****III.1. Basic information**

For each of the affected undertakings (definitions according to the relevant Solvency II template S01.02.01 or S01.02.04, as applicable):

- Undertaking name;
- Undertaking identification code;
- Type of undertaking;
- Country of authorisation;
- Method of Calculation of the (Group) solvency capital requirements (SCR);
- Use of undertaking specific parameters;
- Ring-fenced funds;
- Matching adjustment;
- Volatility adjustment;
- Transitional measure on the risk-free interest rate;
- Transitional measure on technical provisions.

III.2. Financial information

An overview of the latest relevant financial situation of each of the affected undertakings including the main structure of assets, liabilities, own funds (with and without Long Term Guarantee measures) and SCR.

III.3. Information on the position of each affected undertaking in the national insurance market

For each of the affected undertakings:

- Information on the national market share of that undertaking including non-life activities (in terms of gross written premium) total and per line of business, life activities (in terms of gross technical provisions) total and per line of business, size of balance sheet (in terms of total assets);
- Information on number of undertakings active in the national market for those lines of business (life and non-life) in which the affected undertaking is active;
- Information on the cumulative market share of the top 3 -5 -10 insurance undertakings for those lines of business in which the affected undertaking is active;
- An estimate of the distribution of the losses across the affected undertakings active in the national insurance market following the event(s) which have led to the declaration of an exceptional adverse situation by EIOPA.

IV. Information supporting the extension of the recovery period of each affected undertaking

For each of the affected undertakings:

- Financial projections illustrating the recovery of the breach of the SCR under a set of different economic scenarios;
- A description of the assumptions and an estimate of the impact of the recovery measures included in these financial projections. This could include:
 - An estimate of the (planned) reduction of the risk profile of the asset portfolio (including its potential impact on financial markets);
 - An estimate of the amount the undertaking is planning to recapitalise and in what form (e.g. in the form of equity, debt);
 - An estimate of the amount of planned reinsurance and/or other risk mitigation techniques which would be introduced;
 - An estimate of the amount of technical provisions and premiums of the insurance portfolios which are planned to be sold and/or put into run-off.

V. Information on the expected economic implications of not extending the recovery period of each affected undertaking

For each of the affected undertakings:

- An assessment of the adverse impact on the real economy and/or financial markets if the recovery period is not extended. This includes:
 - An estimate of the degree of potential disruption of insurance services if the recovery period is not extended, based on, for example, an analysis of the number of undertakings already providing similar products/services, an estimate of the speed at which policyholders can be expected to switch between insurance companies, a description of the entry barriers for potential new players to enter the market;
 - An estimate of the effect of a potential disruption of insurance services on the real economy, for example, among other things a description of the real economy activities that may be disrupted when insurance coverage is lost;
 - A description of the possible negative effects on consumer confidence caused by not extending the recovery period;
 - An estimate of the impact on financial markets (including second round effects) caused by the recovery period not being extended and the resulting liquidation of the undertaking.

All quantitative information above should be provided on the basis of the most up-to-date data available and in the form of an Excel sheet.
