SUPERVISORY STATEMENT ON DEDUCTION OF FORESEEABLE DIVIDENDS FROM OWN FUNDS UNDER SOLVENCY II

EIOPA-25/135
20 FEBRUARY 2025

European Insurance and
Occupational Pensions Authority

1. LEGAL BASIS

1.1. The European Insurance and Occupational Pensions Authority (EIOPA) provides this Supervisory Statement on the basis of Article 29(2) of Regulation (EU) No 1094/2010[1]. This Article mandates EIOPA to play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.

1.2. EIOPA delivers this Supervisory Statement on the basis of Commission Delegated Regulation (EU) 2015/35[2] and Commission Implementing Regulation (EU) 2023/894[3].

1.3. This Supervisory Statement is addressed to the competent authorities, as defined in Article 4(2) of Regulation (EU) No 1094/2010.

1.4. The Board of Supervisors has adopted this Supervisory Statement in accordance with Article 2(8) of its Rules of Procedure[4].

2. CONTEXT AND OBJECTIVE

2.1. Article 70(1)(b) of Commission Delegated Regulation (EU) 2015/35 requires undertakings and groups to deduct foreseeable dividends, distribution and charges (together 'foreseeable dividends') from own funds. The rationale for this provision is that, once foreseeable, dividends no longer meet the criteria of permanence, availability and loss-absorbing capacity set out in Article 93 of Directive 2009/138/EC for own fund items.

2.2. According to Guideline 2 of the EIOPA Guidelines on classification of own funds (EIOPA-BoS-14/168), dividends become foreseeable at the latest when they are declared or approved by the administrative, management or supervisory body (AMSB), or any other persons who effectively run the undertaking.

2.3. As of 31 December 2023, the instruction regarding the reporting template S.23.01 (Own Funds) in Commission Implementing Regulation (EU) 2023/894 concerning the submission of information to supervisory authority instructs undertakings and groups to deduct in full the annual foreseeable dividend.

2.4. EIOPA understands that insurance and reinsurance undertakings and groups have implemented various approaches to deduct foreseeable dividends from their own funds, which can be summarised into the following three main approaches:

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[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] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

[3] Commission Implementing Regulation (EU) 2023/894 of 4 April 2023 laying down implementing technical standards for the application of Directive 2009/138/EC of the European Parliament and the Council with regard to the templates for the submission by insurance and reinsurance undertakings to their supervisory authorities of information necessary for their supervision and repealing Implementing Regulation (EU) 2015/2450 (1)

[4] 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.

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- annual full deduction;
- quarterly accrued deduction;
- deduction after AMSB approval.

2.5. The annual full deduction approach requires (e.g. in first quarter of Year T - Q1) deduction of the dividends stemming from the realized earnings of the previous (T-1) financial year (not formally approved by the AMSB yet in year T-Q1) as well as the dividends estimated for the full current (T) year profits, which has not yet been closed. Although more conservative and prudent, this approach leads to a double dividend deduction (from previous, T-1, and current, T, year) and may face the challenge of reliably estimating the full profits of the current year (i.e. the remaining quarters of year T, for instance three quarters in case of estimation as of Q1 end, which may be subject to high fluctuations, as well creating an unfair representation of own funds items, not supported by an economic rationale (i.e. full deduction of the dividends without full recognition of the corresponding profits, on which dividends depend), with impact on the Solvency II ratio and its market disclosure.

2.6. The quarterly accrued approach on the opposite recognizes a dividend as foreseeable as soon as the quarterly profits of year T have been realized (similarly to the annual full deduction, the dividends stemming from the realized earnings of the previous (T-1) year is also deducted). As such, it requires the deduction of the pro-rata dividends based on the interim profits realized in the reference quarter of year T. This approach[5] smooths own funds volatility in quarterly reporting (avoiding cliff-edge effects in Q1 of the full annual deduction), aligning the requirement with the actual record of the interim earnings and therefore ensuring a more accurate economic view of the financial situation of the undertaking (matching profits and corresponding dividend deducted), higher reliability of the estimate[6] (limiting the need for restatement) and of market disclosure.

2.7. A third approach is based on the deduction of the dividends stemming from year T only after its approval by the AMSB (i.e. at the end of the year T or at the beginning of the year T+1, without deducting in the course of year T any dividend stemming from year T profits).

2.8. EIOPA is currently reviewing Commission Implementing Regulation (EU) 2023/894 to reflect the changes stemming from the Solvency II review and to consider other changes relevant for supervisory purposes. Therefore, this Supervisory Statement aims to provide initial guidance for the supervision of foreseeable dividends by undertakings and to enhance convergent supervision.

[5] EIOPA understands that the quarterly pro-rata deduction is the approach implemented in the banking sector of the EU.

[6] The quarterly dividend deducted, based on the interim earnings is, however, an estimate of the definitive dividend to be confirmed at the end of the financial years. Therefore, undertakings are expected to adjust this estimate in subsequent quarters based on the actual results (e.g., a profitable Q1 leading to a certain amount of dividends may be followed by a loss-making Q2 requiring undertakings to adjust the dividend's estimate deducted from own funds in Q1).

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3. SUPERVISORY ACTIONS

3.1. EIOPA expects supervisory authorities not to prioritise supervisory actions in case an undertaking or group uses the quarterly accrued approach for the deduction of foreseeable dividends.

3.2. In case where undertakings or groups operate in a more stable and predictable environment, or there is high expectation or history of paying a fixed amount as dividends (e.g. fixed amount of dividend already declared based on accumulated retained earnings), EIOPA considers annual full deduction a feasible option.

3.3. Only in case of objective difficulty to estimate foreseeable dividends, EIOPA considers the deduction of dividends after the formal approval of the AMSB a feasible option.

3.4. This Supervisory Statement will be published on EIOPA's website.

Done at Frankfurt am Main, on 19 February 2025.

[signed]

For the Board of Supervisors

Petra Hielkema

Chairperson

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