



BoA-D-2023-01

DECISION

given by

the
BOARD OF APPEAL
OF THE EUROPEAN SUPERVISORY AUTHORITIES

on
a request for suspension

In the appeal case brought by

Euroins Insurance Group AD
[Appellant]

Against

The European Insurance and Occupational Pensions Authority (EIOPA)
[Respondent]

Board of Appeal

Michele Siri (President and Co-Rapporteur)
Christos Gortsos (Vice President)
Gerben Everts
Geneviève Helleringer
Margarida Lima Rego
Carsten Zatschler (Co-Rapporteur)

Place of this decision: Paris

Date: 8 June 2023

Euroins v EIOPA – Interim Measures


1. This is the decision of the Board of Appeal of the European Supervisory Authorities (“the Board of Appeal”) on the applications for suspension and interim suspension filed by the appellant Euroins Insurance Group AD (“Euroins” or “appellant”) under Article 60(3) of the EIOPA Regulation.¹
2. In the principal proceedings, to which the applications for suspension relate, Euroins challenges EIOPA’s Report SA (EIOPA-23-149) of 28 March 2023, entitled “EIOPA’s assessment of the valuation of technical provisions gross and net of reinsurance for the motor third party liability portfolio of Euroins Romania Asigurare-Reasigurare” (the “EIOPA Report”). That Report contains EIOPA’s assessment of the valuation of technical provisions gross and net of reinsurance for the motor third party liability (“MTPL”) portfolio of Euroins Romania Asigurare-Reasigurare SA (“Euroins Romania”), an insurance company controlled by Euroins with a direct holding of 98.57% of its shares.

I – Background to the dispute

3. On 30 January 2023, the Autoritatea de Supraveghere Financiară (the Financial Supervisory Authority, Romania) (“the ASF”) addressed to EIOPA a request for EIOPA’s view on a complex quota share reinsurance treaty which covered Euroins Romania’s MTPL portfolio and on the methodology used by Euroins Romania for the computation of the best estimate of liabilities.
4. On 8 February 2023, the Комисия за финансов надзор (Financial Services Commission, Bulgaria) (“the FSC”) informed EIOPA about its concerns regarding the ASF’s supervisory actions in relation to Euroins Romania and proposed an external review of the firm’s technical provisions and reinsurance cover by a recognised independent audit and actuarial firm.
5. By letters of 9 and 13 February 2023, EIOPA informed, respectively, the ASF and the FSC, in its capacity as group supervisor, that on the basis of EIOPA’s mandate provided for in the EIOPA Regulation, in particular Article 8(1) point (b) thereof, EIOPA would perform an assessment of the aspects described in the ASF’s letter with

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 2010 L 331, p. 48), as most recently amended by Regulation (EU) 2019/2175 (OJ L 334, 27.12.2019, p. 1).

a view to assessing the correct and consistent application of the Solvency II framework.²

6. In the meantime, with a request first submitted on 3 February and reiterated on 6 and 14 February 2023, Euroins informed EIOPA that it was concerned about the ASF's supervisory actions towards Euroins Romania. Euroins requested an extraordinary supervisory college meeting and proposed an external review of Euroins Romania's economic balance sheet by an internationally recognised team of actuarial and accounting experts.
7. By letter of 13 February 2023, EIOPA gave its feedback on Euroins' request. It underlined that, based on the European Union (EU) legal framework, day-to-day supervision is the exclusive competence and responsibility of the national supervisory authorities. In the same letter, EIOPA also informed Euroins that an extraordinary supervisory college meeting had taken place on 7 February 2023, aiming at ensuring that cooperation, exchange of information and consultation processes among the members and participants of the college are granted.
8. The supervisory college comprised, besides EIOPA, the FSC, the ASF, the Bank of Greece (as the competent supervisory authority in Greece) and the Insurance Supervision Agency of North Macedonia.
9. By Decision No 262 of 17 March 2023, the ASF withdrew the operation license of Euroins Romania and having ascertained its insolvency, filed a request for Euroins Romania's bankruptcy.
10. According to Euroins, the ASF Decision No 262 was made despite assurances from the FSC that Euroins had ensured its solvency thanks to the Reinsurance contract Euroins Romania entered with EIG Re, whose solvency is confirmed by the FSC itself.
11. On 28 March 2023, EIOPA produced the EIOPA Report and shared it with the ASF and the FSC, giving its assessment of the valuation of technical provisions gross and net of reinsurance for the MTPL portfolio of Euroins Romania.
12. 
13. Neither the EIOPA Report, nor the preparatory steps taken by EIOPA to prepare it, were disclosed to Euroins or Euroins Romania.

² 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, OJ L 335, 17.12.2009, p. 1 (as in force).

14. On 11 April 2023, Euroins Romania challenged the ASF Decision No 262 before the Curtea de Apel București (Court of Appeal, Bucharest, Romania). Euroins and Euroins Romania also filed on the same date and before the same court, a request to immediately suspend the effect of the ASF Decision No 262 until the termination of the main proceedings. According to Euroins, they and Euroins Romania first learned about the Report and some of its conclusions from the statement of defence filed by the ASF in the context of the national court proceedings for the suspension of the ASF Decision No 262. According to EIOPA, Euroins had already filed a first request to access the Report on 6 April 2023, based on leaks in the Romanian media that reported confidential information from the Report. This request was, in any event, reiterated on 19 and 20 April 2023. By letters of 20 and 24 April 2023, EIOPA responded to these requests.

15. On 28 April 2023, Euroins requested the FSC to grant it access to the EIOPA Report, which was denied. On 16 May 2023, upon request by the FSC filed on 10 May 2023, EIOPA gave its consent to share the EIOPA Report with Euroins.

II – Procedure and forms of order sought

16. By Notice of Appeal lodged by email on 16 May 2023, Euroins challenged the EIOPA Report. It requests the Board of Appeal to issue a decision ascertaining that:

- 1) EIOPA acted in excess of its regulatory powers insofar as its role and involvement in the initiation, drafting and release of the EIOPA Report are concerned;
- 2) EIOPA infringed Euroins Romania's rights and acted in an excessive and discriminatory manner, by not requesting Euroins Romania's position with respect to the findings of the EIOPA Report and by not granting Euroins Romania access to the EIOPA Report itself;
- 3) EIOPA infringed the principles of proportionality, independence, objectivity, and transparency by withholding EIOPA Report from Euroins and Euroins Romania; and
- 4) the EIOPA Report is rendered null and void as of the date of such decision.

17. By separate document, lodged on 24 May 2023, Euroins brought the present application for interim measures, in which it requests the Board of Appeal to:

- 1) suspend the application of the EIOPA Report pending the settlement by the Board of Appeal of Euroins' appeal;

- 2) order an immediate and interim suspension of the EIOPA Report for a period sufficient to permit full discussion and settlement of the suspension request; and
 - 3) communicate the suspension decision to the ASF.
18. On 26 May 2023, the President of the Board of Appeal invited the parties to submit their observations on three points of relevance, notably with regard to:
- 1) what constitutes an “exceptional” case for the purposes of this provision, and whether an interim suspension is warranted in the case at hand;
 - 2) the negative consequences (if any) of a suspension of the contested act; and
 - 3) what period would be “sufficient to permit full discussion of the suspension”.
19. On 30 May 2023, the parties complied with that invitation, filing their observations.
20. In its response, EIOPA raised a plea of inadmissibility against the Notice of Appeal and requested the Board of Appeal to:
- 1) to dismiss the appeal as inadmissible; and
 - 2) to dismiss the suspension request as unfounded.

III – Legal argument

21. The first subparagraph of Article 60(3) of the EIOPA Regulation establishes, as a general rule, that appeals do not have suspensory effect. This is based on the principle that acts adopted by the institutions and agencies of the EU are presumed to be lawful.
22. By way of exception, under Article 60(3), second subparagraph, of the EIOPA Regulation, the Board of Appeal may, if it considers that circumstances so require, suspend the application of a decision challenged before the Board of Appeal. Article 10(1) of the Rules of Procedure³ of the Board reiterates this rule, using analogous language (“Article 10(1) Suspension”).
23. Moreover, Article 10(2) of the Rules of Procedure provides that, in exceptional cases, the Board of Appeal may suspend the application of the contested decision for a period sufficient to permit full discussion of the suspension (“Article 10(2) Suspension”).

³ Board of Appeal, 2020 01.

Admissibility

24. In the present case, EIOPA has challenged the admissibility of the appeal; under Article 60(4) of the EIOPA Regulation and Article 9 of the Rules of Procedure, the Board of Appeal shall examine whether the appeal is admissible before examining whether it is well-founded. The Board of Appeal considers that it would therefore, in principle, be appropriate to rule on the admissibility at the same time as ruling on any suspension request.⁴
25. However, for the reasons set out in detail below, the Board of Appeal finds that, in any event, and without prejudice to a ruling on the admissibility of the appeal, the circumstances do not require an Article 10(1) Suspension, and that this is moreover not an exceptional case requiring an Article 10(2) Suspension. It is, therefore, appropriate to reject the applications forthwith, reserving the decision on admissibility and, as the case may be, on the merits.

The applications for suspension under Article 10(1) and (2)

26. Euroins bases its applications on the bankruptcy proceedings pending against Euroins Romania in front of the Tribunalul București (Regional Court, Bucharest, Romania). Euroins argues that the use of the EIOPA Report may decisively support the ASF's position in the bankruptcy proceedings, unless suspended. In particular, according to Euroins, the use of the EIOPA Report by the ASF in front of the Tribunalul București in the bankruptcy proceedings, or arguments related to the outcome of such a report in the absence of its suspension, may trigger effects which cannot be subsequently reversed. Euroins presents suspension as an important guarantee of the right to effective judicial protection as enshrined in Article 47 of the Charter of Fundamental Rights.⁵
27. Euroins adds that the eventual declaration of Euroins Romania as bankrupt would have irreversible negative consequences for the Romanian market for compulsory MTPL insurance and investors, given that Euroins Romania holds 32.07% of the MTPL market in Romania, ranking first for this segment of the market, 20.07% of the general insurance market (ranking second) and 16.85% of the general and life insurance market (ranking third for the aggregate general and life insurance market in Romania). In light of these market shares, it is also in the interest of the public, as well as of Euroins Romania's customers and stakeholders, to offer to Euroins Romania access to a fair trial.
28. EIOPA submits that the application for interim measures is unfounded.
29. According to the case law, interim measures may be granted if it is established that they are justified, *prima facie*, in fact and in law, and that they are urgent in so far as

⁴ Board of Appeal Decision of 13 September 2019, *Creditreform Rating AG v EBA*, paragraph 36.

⁵ Charter of fundamental rights of the European Union, proclaimed on 7 December 2000 in Nice (OJ 2000 C 364, p. 1).

they are necessary in order to avoid serious and irreparable harm. Those conditions are cumulative, and consequently an application for interim measures must be dismissed if any one of them is not satisfied. An application for interim measures must also, when necessary, involve a weighing of the competing interests.⁶

30. In its application for interim measures, Euroins in essence proceeds on the basis that the Tribunalul București may be induced by reliance on the EIOPA Report to reach an incorrect judgment in the bankruptcy proceedings pending in front of it. Thus, in its own submissions, Euroins acknowledges that the potentially serious and irreversible effects would result from the acts adopted by a national court, i.e., the Tribunalul București, in the bankruptcy proceedings. The concern raised by Euroins is that the national court may mechanically follow the EIOPA Report.
31. In that regard, it must be recalled that the Tribunalul București, as a court of a Member State, is, by virtue of Article 19 of the Treaty on European Union (“TEU”), itself entrusted with the responsibility for ensuring judicial review in the EU legal order and is under a duty of ensuring that in the interpretation and application of the EU Treaties the law is observed.⁷
32. Indeed, according to settled case-law, the principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and which has also been reaffirmed by Article 47 of the Charter of fundamental rights.⁸
33. The legal protection granted by EU law includes the right of individuals to request national courts to refer questions to the Court of Justice for a preliminary ruling. This includes cases where national measures are based on EU measures, the legality of which is challenged by those individuals.⁹ In such cases, national courts may also suspend the enforcement of the national measure in case they entertain serious doubts about the legality of the EU measure.¹⁰
34. By way of consequence, the Tribunalul București is both competent and, where effective judicial protection of individuals’ rights under EU law so requires, obliged to consider arguments concerning the legality and effects to be attributed to the EIOPA Report. While, in contrast to the Board of Appeal, the Tribunalul București would not have the power to annul an act of EIOPA, it does have the power to suspend the enforcement of national measures that implement said EIOPA act, if such is the

⁶ See Order of 2 March 2016, *Evonik Degussa v Commission*, C-162/15 P-R, EU:C:2016:142, paragraph 21 and the case-law cited.

⁷ Judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 32-33.

⁸ Judgment of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 37.

⁹ Judgments of 21 February 1991, *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest*, C-143/88 and C-92/89, EU:C:1991:65, paragraph 16, and of 9 November 1995, *Atlanta Fruchthandelsgesellschaft (I)*, C-465/93, EU:C:1995:369, paragraph 20.

¹⁰ *Ibid.*

case, and seek a reference from the Court of Justice as regards the validity of the EIOPA act.

35. It is in this regard clear from established case-law that the suspension of effects of EU acts in proceedings pending before a national court, whilst it is governed by national procedural law, is in all Member States subject to conditions which are uniform and analogous with the conditions for an application for interim relief brought before the General Court of the Court of Justice.¹¹
36. In light of the above, the Board of Appeal does not consider that there is any risk of serious and irreparable harm from the Tribunalul București being left to exercise its own jurisdiction in accordance with EU law.
37. The mutual trust between bodies called upon to apply EU law within the EU, be they at the national or at the EU level, moreover precludes any of these bodies from taking steps which are based on the assumption that other bodies will not comply with their obligations under EU law.¹²
38. It should be recalled in this regard that EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. The principle of “mutual trust”, therefore, requires each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.¹³
39. Finally, in addition, to the extent that national law provides for the possibility of an appeal against the forthcoming decision of the Tribunalul București, a suspension of the EIOPA Report can, in any event, not be considered urgent. Conversely, if no appeal is possible against that decision, the third subparagraph of Article 267 of the Treaty on the Functioning of the European Union (“TFEU”) provides that, where no judicial remedy is available under national law against the decision of a court or tribunal of a Member State, that court or tribunal is, in principle, obliged to bring the matter before the Court of Justice, to decide the questions of EU law.¹⁴

¹¹ Judgment of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 79, citing Judgments of 21 February 1991, *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest*, C-143/88 and C-92/89, EU:C:1991:65, paragraphs 26 and 27; of 9 November 1995, *Atlanta Fruchthandelsgesellschaft (I)*, C-465/93, EU:C:1995:369, paragraph 39; and judgment of 6 December 2005 in *ABNA*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 104.

¹² See, to that effect, judgment of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97, paragraph 125, and case law cited.

¹³ Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 35 and 36.

¹⁴ Judgment of 9 September 2015, *Ferreira da Silva e Brito*, C-160/14, EU:C:2015:565, paragraph 37 and the case-law cited.

40. In the absence of urgency and impending serious and irreparable harm, the circumstances do not justify a suspension of the EIOPA Report in accordance with Article 10(1) of the Rules of Procedure. For the same reason, the conditions for a suspension pursuant to Article 10(2) of the Rules of Procedure are not satisfied.
41. It follows from all of the foregoing that the applications for interim measures must be dismissed as Euroins has failed to establish that the condition relating to urgency and impending serious and irreparable harm is satisfied, without it being necessary to rule on whether there is a *prima facie* case or to weigh up the competing interests.

IV – Decision

On these grounds, the Board of Appeal unanimously decides to dismiss the applications for suspension.

The original of this Decision is signed by the Members of the Board of Appeal in electronic format, and countersigned by hand by the Secretariat.

Michele Siri (President, Co-Rapporteur)
(SIGNED)

Christos Gortsos (Vice President)
(SIGNED)

Gerben Everts
(SIGNED)

Geneviève Helleringer
(SIGNED)

Margarida Lima Rego
(SIGNED)

Carsten Zatschler (Co-Rapporteur)
(SIGNED)

On behalf of the Board of Appeal Secretariat

Adrien Rorive
(SIGNED)

A signed copy of the decision is held by the Secretariat