C/2024/1097

5.2.2024

Action brought on 18 July 2023 — Evroins inshurans grup v EIOPA

(Case T-416/23)

(C/2024/1097)

Language of the case: English

Parties

Applicant: Evroins inshurans grup AD (Sofia, Bulgaria) (represented by: A. Morogai, F. Giurgea and H. Drăghici, lawyers)

Defendant: European Insurance and Occupational Pensions Authority

Form of order sought

The applicant claims that the Court should issue a decision establishing that:

— the EIOPA acted in excess of its regulated powers insofar as its role and involvement in the initiation, drafting and release of the 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 SA (EIOPA-23-149) of 28 March 2023 ('the EIOPA Report') are concerned;

— the EIOPA infringed Evroins inshurans grup's ('Euroins') and Euroins Romania Asigurare-Reasigurare SA's ('Euroins Romania') 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;

— the EIOPA infringed the principles of proportionality, independence, objectivity, and transparency by withholding the EIOPA Report from Euroins and Euroins Romania; and

— the EIOPA Report is rendered null and void as of the date of its issuance.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that the EIOPA acted in excess of its legal powers when initiating, drafting and issuing the EIOPA Report:

   — the EIOPA's powers as established under Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([1]) were breached when issuing the EIOPA Report, as Regulation No 1094/2010 does not provide for a legal basis or any regulated powers for the EIOPA to initiate and carry out own assessments of the technical provisions gross and net of reinsurance for the motor third party liability portfolio of an insurance company activating in an EU Member State, nor to issue a report such as the EIOPA Report setting out the conclusions of such assessment;

   — the EIOPA exceeded its regulated powers and competence under Regulation No 1094/2010 by undertaking the assessment of the valuation of technical provisions gross and net of reinsurance for Euroins Romania Asigurare — Reasigurare SA's motor third party liability portfolio and by issuing the EIOPA Report, as such powers are reserved to national supervisory authorities, as per Directive 2009/138/EC of the European Parliament and of the Council ([2]).

2. Second plea in law, alleging that the EIOPA infringed the provisions of Regulation No 1094/2010, Directive 2009/138 and Commission Delegated Regulation (EU) 2015/35 ([3]), and the principles of proportionality, equal treatment, independence, objectivity, and transparency when issuing the EIOPA Report:

([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).

([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 (Solvency II) (recast) (OJ 2009 L 335, p. 1).

([3]) 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) Text with EEA relevance (OJ 2015 L 12, p. 1).

— the EIOPA carried the assessment of the technical provisions gross and net of reinsurance for the motor third party liability portfolio of Euroins Romania without allowing the concerned insurance company — i.e. Euroins Romania — to be involved in such assessment, to provide to the EIOPA up-to-date, complete and accurate technical and financial data required for such assessment or to provide its comments to the conclusions of the EIOPA's assessment ascertained within the EIOPA Report or in any case before the release of the EIOPA Report;

— the EIOPA withheld access to Euroins and Euroins Romania to the EIOPA Report whilst allowing the disclosure of such EIOPA Report to Romanian courts of law;

— the issuance of the EIOPA Report was not triggered by any emergency as regulated under Article 18 of Regulation No 1094/2010 and therefore was excessive;

— through the EIOPA Report, the EIOPA discriminates against Euroins Romania by comparison to other insurance undertakings in Romania and in other Member States;

— the EIOPA Report provides an unfair treatment to Euroins Romania by not offering this entity the possibility to acknowledge, assess and address EIOPA's findings;

— the EIOPA Report was issued in breach of the EIOPA's obligations: 'preventing regulatory arbitrage and promoting equal conditions of competition', 'enhancing supervisory convergence across the internal market' and 'to ensure that all stakeholders are treated fairly' as regulated under Article 1(6) of Regulation No 1094/2010.

3. Third plea in law, alleging that EIOPA Report was issued with misuse of EIOPA's powers:

— by not (i) notifying Euroins Romania at any stage of the assessment about its course, (ii) by not offering the possibility to Euroins Romania to provide any details/comments/information etc. to the EIOPA during the assessment, and (iii) by permitting the disclosure of the EIOPA Report to the courts of law, the EIOPA aided the Romanian Financial Supervisory Authority in its biased and unlawful investigation of Euroins Romania and ultimate elimination of this entity from the Romanian insurance market;

— there is a divergence between the objectives for which supervisory powers were granted to the EIOPA under the TFEU and Regulation No 1094/2010 and the actual purpose and outcome of the EIOPA Report — i.e., assisting the Romanian Financial Supervisory Authority in an unlawful and biased investigation of Euroins Romania, allowing disclosure thereof to courts and ultimately limiting Euroins Romania right to a fair assessment of its real financial situation and to a fair trial.