

Novis Insurance Company, Novis Versicherungsgesellschaft,  
Novis Compagnia di Assicurazioni, Novis Poist'ovňa a.s.

v

European Insurance and Occupational Pensions Authority (EIOPA)

Order of the General Court (Seventh Chamber) of 23 May 2025

(Action for annulment – European System of Financial Supervision – Investigation in respect of an infringement of EU law – Recommendation of EIOPA on actions to be taken to comply with EU law – Article 17(3) of Regulation (EU) No 1094/2010 – Act not open to challenge – Inadmissibility)

Action for annulment – Actionable measures – Concept – Acts producing binding legal effects – Recommendation of the European Insurance and Occupational Pensions Authority (EIOPA) to a national authority on actions to be taken to comply with EU law – Not included

(*Art. 263 TFEU; European Parliament and Council Regulation No 1094/2010, Art. 17(3)*)

(see paragraphs 30-33, 35)

### Résumé

Hearing an action for annulment, which it dismisses as inadmissible, on the ground that there is no actionable measure, the General Court rules for the first time on whether recommendations issued by the European Insurance and Occupational Pensions Authority (EIOPA), addressed to a national authority on the basis of Article 17(3) of Regulation No 1094/2010 ( [1](#) ) and setting out the action to be taken to comply with EU law, may be challenged before the EU Courts. On that occasion, the Court clarifies the legal nature of the acts adopted by EIOPA and by the Commission on the basis of Article 17 and, thus, whether those acts may be the subject of an action for annulment.

The applicant, Novis Insurance Company, Novis Versicherungsgesellschaft, Novis Compagnia di Assicurazioni, Novis Poist'ovňa a.s., is a life insurance company established in Slovakia and subject to the supervision of the Národná banka Slovenska (Slovak National Bank) ('the NBS'). EIOPA had carried out an investigation that sought to determine whether the NBS had exercised its supervisory powers over the applicant in accordance with the Solvency II Directive. ( [2](#) ) At the end of that investigation, EIOPA adopted a recommendation, addressed to the NBS, on actions necessary to comply with the Solvency II Directive. ( [3](#) )

That act finds an infringement of EU law by the applicant and by the NBS and makes two recommendations addressed to the NBS setting out the action to be taken by the NBS in order to bring that infringement to an end. That action consists, in essence, in reviewing, within 45 days, the applicant's situation and adopting, with regard to the applicant, a 'full/integrated' strategy resulting either in the recovery of all infringements or in the withdrawal of its authorisation.

On 13 September 2022, the Commission adopted a formal opinion, addressed to the NBS, on actions necessary to comply with the Solvency II Directive. ( [4](#) ) That opinion was the subject of an action for annulment brought by the applicant before the General Court and registered as Case T-179/24.

Following that formal opinion, the NBS withdrew the applicant's authorisation.

### ***Findings of the Court***

Hearing a plea of inadmissibility raised by EIOPA, the Court examines at the outset whether the contested act constitutes an act which may be the subject of an action for annulment under Article 263 TFEU.

The Court observes that actions for annulment are available in the case of measures or provisions which are intended to have binding legal effects. Although that is not, in principle, the case of recommendations, the impossibility of bringing an action for annulment against a recommendation does not apply if the contested act, by reason of its content, does not constitute a genuine recommendation.

In this respect, in order to determine whether an act produces binding legal effects, it is necessary to examine the substance of that act and to assess its effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the EU institution, body, office or agency which adopted it. In addition, the subjective criterion relating to the intention of the author of the act may also be taken into consideration.

As regards the context in which the contested act was adopted and the powers of its author, the Court observes that Article 17 of Regulation No 1094/2010 establishes a ‘three-step mechanism’ where a national authority is alleged, in its supervisory practices, to have failed to apply or to have applied incorrectly or insufficiently EU law, in particular the Solvency II Directive.

Thus, in the first step, EIOPA investigates, where appropriate, the alleged infringement or non-application of EU law. ( [5](#) ) At the end of that investigation, EIOPA may address to the national authority concerned a ‘recommendation setting out the action necessary to comply with Union law’. ( [6](#) )

In the second step, if the national authority concerned has not complied with EU law within one month from receipt of EIOPA’s recommendation, the Commission may issue a ‘formal opinion requiring [that authority] to take the action necessary to comply with Union law’. ( [7](#) )

In the third step, if the national authority concerned does not comply with the formal opinion issued by the Commission within the period of time specified by that opinion and if certain conditions are met, EIOPA may adopt an ‘individual decision addressed to [the financial institution concerned] requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any practice’. ( [8](#) )

It is thus apparent from the wording of Article 17 of Regulation No 1094/2010 that recommendations issued by EIOPA on the basis of Article 17(3) merely ‘set out’ the action to be taken, whereas formal opinions issued by the Commission on the basis of Article 17(4) and individual decisions adopted by EIOPA on the basis of Article 17(6) ‘require’ their respective addressees to take the necessary action.

In addition, the second subparagraph of Article 17(7) of Regulation No 1094/2010 provides that, when taking action in relation to issues which are subject to a formal opinion issued by the Commission or to an individual decision of EIOPA, the national authorities concerned ‘shall comply with the formal opinion or the decision, as the case may be’. However, neither that provision nor any other provision of that regulation provides that those authorities are required to comply with recommendations issued by EIOPA.

In the light of all the foregoing considerations, the Court holds that recommendations issued by EIOPA on the basis of Article 17(3) of Regulation No 1094/2010 are mere recommendations and are not themselves intended to produce binding legal effects vis-à-vis the national authority concerned or the financial institution concerned. By contrast, formal opinions issued by the Commission on the basis of Article 17(4) of that regulation and individual decisions adopted by EIOPA on the basis of Article 17(6) of that regulation produce binding legal effects vis-à-vis those to whom they are addressed.

Thus, like recommendations issued by the European Banking Authority on the basis of a provision drafted in terms identical to those of Article 17(3) of Regulation No 1094/2010, ( [9](#) ) such recommendations do not produce binding legal effects, with the result that they cannot be the subject of an action for annulment under Article 263 TFEU.

In those circumstances, and also taking into account the content of the contested act, its wording and the intention of its author, the Court concludes, in the present case, that the contested act does not produce binding legal effects, with the result that it cannot be the subject of an action for annulment. The Court therefore dismisses the action as inadmissible.

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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 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) ([OJ 2009 L 335, p. 1](#); ‘the Solvency II Directive’).

([3](#)) Under Article 17(3) of Regulation No 1094/2010.

([4](#)) Under Article 17(4) of Regulation No 1094/2010.

([5](#)) Under the first subparagraph of Article 17(2) of Regulation No 1094/2010.

([6](#)) Under the first subparagraph of Article 17(3) of Regulation No 1094/2010.

([7](#)) Under the first subparagraph of Article 17(4) of Regulation No 1094/2010.

([8](#)) Under the first subparagraph of Article 17(6) of Regulation No 1094/2010.

([9](#)) See, to that effect, judgment of 25 March 2021, *Balgarska Narodna Banka* ([C-501/18](#), [EU:C:2021:249](#), paragraphs [79](#) and [80](#)).