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CODEC 1510****ADDENDUM TO "I" ITEM NOTE**

from: General Secretariat of the Council
to: Coreper (Part 2)

Subject: Proposal for a Directive of the European Parliament and of the Council
amending Directive 2009/138/EC on the taking-up and pursuit of the business
of Insurance and Reinsurance (Solvency II) as regards the dates of its
transposition and application and the date of repeal of certain Directives (first
reading)
- *General approach (Statement for the minutes)*

STATEMENT BY SWEDEN

Sweden strongly supports the reform of the solvency and risk management regimes of insurance companies brought about by directive 2009/138 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II). The directive should be implemented and applied as soon as reasonably possible. However, the timeline for the transposition of this very significant piece of legislation should recognise national constitutional requirements associated with the legislative process. Sweden firmly takes the view that member states should be granted enough time to comply with their respective constitutions in transposing EU legislation. Regrettably, the adoption of the amendments to Solvency II included in the proposed directive amending directives 2003/71 and 2009/138 in respect of the powers of the European Insurance and Occupational Pensions Authority and European Securities and Markets Authority (Omnibus II) has been postponed. From our perspective, it is not possible to separate the transposition of the Solvency II directive from the transposition of the amending directive (Omnibus II) since the latter contains extensive changes to the substance of Solvency II.

Omnibus II cannot be expected to be adopted until the autumn of 2012. At that point, the Swedish government is constitutionally required to put proposed amendments to national law, aiming to implement Omnibus II, to a public consultation. The consultation period normally lasts for three months. Further, the proposed legislation must be reviewed from a constitutional and legal perspective by the Council on Legislation. Naturally, the reading in parliament then follows. That reading will take 2–3 months to complete. The proposed date for transposition by the member states of Solvency II – 30 June 2013 – does not allow for the aforesaid constitutional requirements to be fulfilled, given the postponed adoption of Omnibus II. As a result, Sweden will not be able to comply with article 309 (1) of directive 2009/138, as amended by the proposal. Swedish national legislation transposing directive 2009/138, as amended by Omnibus II, cannot be adopted until the end of 2013 at the earliest. It is a matter of concern to the Swedish government that EU legislation cannot in this case be transposed in accordance with the national constitutional requirements without breaching the time limits laid down by EU law.
