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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 September 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

Delegations will find attached document COM(2017) 537 final.

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EUROPEAN
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Brussels, 20.9.2017
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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

This proposal forms part of a package of measures with the purpose of enhancing the supervision of EU financial markets by improving the operation of the system of European Supervisory Authorities (ESAs) and accelerating and completing the Capital Markets Union. This proposal concerns the supervision and powers of the European Securities and Markets Authority (ESMA) and provides for the transfer of certain supervisory powers currently vested with the national competent authorities.

The Markets in Financial Instruments Directive 2014/65/EU (MiFID II)¹ introduces a new type of services that are subject to authorisation and supervision: Data Reporting Services (DRSs) operated by Data Reporting Services Providers (DRSPs). The effective circulation, monitoring and reconstruction of trading data was not addressed in Directive 2004/39/EC on markets in financial instruments (MiFID I)². This led to EU trading data that was neither consistent nor of adequate quality to monitor whether the objectives of MiFID were being properly achieved. In addition, trading data was not made available at reasonable cost throughout the EU by the relevant trading venues.

Since inconsistencies in quality, formatting, reliability and cost have a detrimental effect on data transparency, investor protection and market efficiency, MIFID II intends to improve the quality and accessibility of trading data by setting a standard format for trading data that is easy to consolidate, readily understood and available at a reasonable cost, and by imposing formal organisational requirements on data reporting services providers (DRSPs) and requiring them to be authorised by their national authority.

Given the cross-border dimension of data handling, the benefits of pooling data-related competences - including potential economies of scale - and the adverse impact of potential divergences in supervisory practices on both the quality of trading data and on the tasks of data reporting service providers, it is appropriate to transfer the authorisation of, and the supervision on, data reporting service providers from national authorities to ESMA.

The current proposal is therefore limited to transfer the powers to authorise and supervise those entities from national competent authorities to ESMA by inserting those powers in Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR)³ without bringing any further change to the substantive rules applicable to DRSPs including the conditions for authorisation and organisational requirements initially established by MIFID II. As a consequence, the relevant provisions pertaining to the DRSPs set out in MiFID II are deleted.

¹ Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

² Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

In addition, this proposal also concerns the role of EIOPA in the approval processes for internal models.

The Solvency II Directive (Directive 2009/138/EC⁴) provides that in accordance with the risk-oriented approach to the Solvency Capital Requirement (SCR), it is possible, in specific circumstances, for insurance and reinsurance undertakings and groups, at the level of either individual undertakings or groups, to use internal models for the SCR calculation, rather than the standard formula. These internal models are subject to supervisory approval. Despite the valuable work carried out by EIOPA on supervisory convergence as regards internal models, major inconsistencies remain with regard to the requirements of competent authorities for internal models, and difficulties exist in reaching joint agreements on group internal models within colleges of supervisors.

Divergence in the supervision and approval of internal models leads to inconsistencies and creates an uneven level playing field amongst market participants. The proposal therefore promotes supervisory convergence by enhancing EIOPA's role with regard to internal models, through provisions on cooperation and information sharing, coupled with powers for EIOPA to adopt Opinions in this area, and to contribute on its own initiative to the settlement of disputes between supervisory authorities, including through binding mediation.

- **Consistency with existing policy provisions in the policy area**

The current proposal is consistent with other pieces of Union law including those which confer direct powers to ESAs:

- **Consistency with other Union policies**

This proposal does not affect other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 53(1) and 62 of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

According to the principle of subsidiarity (Article 5.3 of the TFEU), action on EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU.

The substantive authorisation and supervision are already covered by MiFID II and hence substantive has been conferred to the Union level. The only modification brought about by this proposal is that ESMA instead of national competent authorities will be responsible for

⁴ 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 L 335, 17.12.2009, p.1).

the authorisation of DRSPs and their supervision. In this regard, financial markets are inherently cross-border in nature and are becoming more so. Financial markets data intensity is also growing rapidly. Enhanced efficiency of handling data relevant aspects of the MIFID II framework is called for to meet these challenges. By transferring authorisation and supervision of data service reporting providers to ESMA, one can ensure uniform conditions for trading data and trade reporting channels, and at the same time allow national competent authorities to free up resources for supervision of the end-users of the data.

The principle of supervisory approval for internal models is already contained in the Solvency II Directive .The modifications brought about by this proposal seek to enhance EIOPA's role in order to achieve greater supervisory convergence in this area, in particular for insurance groups present in several EU Member States, whilst leaving the power to approve such applications with the supervisors and as applicable, the supervisory college.

Proportionality

The proposal takes full account of the principle of proportionality, being adequate to reach the objectives and not going beyond what is necessary in doing so. It is compatible with the proportionality principle, taking into account the right balance of public interest at stake and the cost-efficiency of the measure.

- **Choice of the instrument**

This proposal amends a Directive of the European Parliament and of the Council adopted on the basis of Article 53(1) of the TFEU and a Directive of the European Parliament and the Council adopted on the basis of Article 53 and 62 TFEU. A proposal for a Directive is therefore required to amend both these Directives.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Impact assessment**

The proposed amendments to these Directives are of a very limited nature and given the recent implementation and application of these Directives, the changes do not justify the carrying out of any separate evaluation.

- **Regulatory fitness and simplification**

The one-stop shop offered for authorisation and supervision by virtue of amending MiFID II and MiFIR will contribute to reduce regulatory burden, including for smaller DRSPs. The powers and competences of competent authorities with respect to DRSPs will be transferred to ESMA. This single authorisation and oversight framework will result in substantial simplification for DRSPs with cross-border presence and reduction of administrative burden.

As regards Solvency II, supervisory convergence contributes to streamlined application processes and requirements across the Union, reducing an unlevel playing field, in particular for insurance groups.

- **Fundamental rights**

The right of due process and right of defence have been safeguarded notably through a clear procedural framework and judicial control of investigatory measures where required by national judge, and of final decisions under this Regulation by the Court of Justice.

4. BUDGETARY IMPLICATIONS

This is covered by the amendments to MiFIR and the amendments to the EIOPA founding Regulation.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of the proposal sets out amendments that are required for the transfer of current powers and competences vested in the competent authorities to ESMA, which will be responsible for the authorisation and supervision of firms that intend to carry out data reporting services.

These amendments comprise the modification and the deletion of several sections of MiFID II, including Title V pertaining to the DRSPs, Section D of Annex I and powers of competent authorities to impose sanctions on DRSPs.

Article 2 of this proposal includes the amendments to the Solvency II-Directive to give EIOPA a greater role to contribute to supervisory convergence in the area of internal model application, and comprises changes with respect to information sharing regarding such model applications, the possibility for EIOPA to issue Opinions in relation to that matter, as well as for EIOPA to assist in the settlement of disputes between supervisory authorities, either at their request, on its own initiative or, in certain circumstances, at the request of concerned undertakings.

The amendments also provide that EIOPA should prepare annual reports on this matter. This will allow close monitoring of the situation regarding internal model applications, including bringing to light any outstanding concerns with regard to supervisory convergence in this area.

This Article also aligns some parts of Solvency II (Article 231(3) and 237(3)) with changes to the EIOPA founding Regulation contained in the Commission's proposal for that Regulation on binding mediation. In addition, this Article applies the necessary amendments to Article 248(4) of Solvency II on binding mediation, removing references to a previous dispute settlement procedure with CEIOPS (the Committee of European Insurance and Occupational Pensions Supervisors), which has been superseded by EIOPA.

Articles 3 and 4 set out transposition and entry into force provisions.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,⁵

Having regard to the opinion of the European Economic and Social Committee⁶,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2014/65/EU creates a regulatory framework for data reporting services providers and requires post-trade data reporting services to be authorised as approved publication arrangements (APAs). In addition, consolidated tape providers (CTP) are required to offer consolidated trading data covering all trades in both equity and non-equity instruments throughout the Union, in accordance with Directive 2014/65/EU. Directive 2014/65/EU also formalises transaction reporting channels to the competent authorities by requiring third parties that report on behalf of firms to be authorised as approved reporting mechanisms (ARMs).
- (2) The quality of trading data and of the processing and provision of those data, including cross-border data processing and provision, is of paramount importance for achieving the main objective of Regulation (EU) No 600/2014 of the European Parliament and of the Council, which is to strengthen the transparency of financial markets. Accurate data provide users with an overview of trading activity across Union financial markets and competent authorities with accurate and comprehensive information on relevant transactions. Given the cross-border dimension of data handling, the benefits of

⁵ OJ C , , p. .

⁶ OJ C , , p. .

pooling data-related competences including potential economies of scale - and the adverse impact of potential divergences in supervisory practices on both the quality of trading data and on the tasks of data reporting service providers, it is therefore appropriate to transfer the authorisation of, and the supervision of data reporting service providers, as well as data gathering powers, from competent authorities to ESMA

- (3) To achieve a consistent transfer of such powers it is appropriate to delete respective provisions pertaining to the operational requirements for DRSPs and competences of competent authorities with respect to data reporting service providers set out in Directive 2014/65/EU, and to introduce the respective provisions in Regulation (EU) No 600/2014 of the European Parliament and of the Council⁷.
- (4) The transfer of the authorisation and supervision of data reporting service providers to ESMA is congruent with ESMA's tasks. More specifically, the conferral of data gathering powers, authorisation and oversight from competent authorities to ESMA is instrumental to other tasks ESMA is performing under Regulation (EU) No 600/2014, such as market monitoring, ESMA temporary intervention powers and position management powers, as well as ensuring consistent compliance with pre-trade and post-trade transparency requirements. Directive 2014/65/EU should therefore be amended accordingly,
- (5) Directive 2009/138/EC of the European Parliament and of the Council⁸ (Solvency II) provides that in accordance with the risk-oriented approach to the Solvency Capital Requirement, it is possible, in specific circumstances, for insurance and reinsurance undertakings and groups to use internal models for the calculation of that requirement, instead of using the standard formula.
- (6) In order to provide policy holders and beneficiaries with an equivalent level of protection, such internal models should be subject to prior supervisory approval on the basis of harmonised processes and standards.
- (7) In order to ensure a high degree of convergence in the area of supervision and approval of internal models, EIOPA should be able to issue Opinions on issues relating to such internal models.
- (8) With a view to promoting supervisory convergence, EIOPA should be able, either on its own initiative or at the request of supervisory authorities, to assist them in reaching an agreement. In specific circumstances, where supervisory authorities fail to reach an agreement on the approval of a group internal model, and before the group supervisor adopts its final decision, an undertaking should be able to request EIOPA to mediate and assist the supervisory authorities in finding an agreement. Supervisory authorities should cooperate and exchange all relevant information with EIOPA to ensure that EIOPA can participate fully in the approval process of group internal models.

⁷ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

⁸ 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 L 335, 17.12.2009, p.1).

- (9) In order to take account of the new set-up of panels under Regulation (EU) No 1094/2010, relevant provisions in Solvency II referring to panels should be amended to align them with the new procedure for binding mediation under that Regulation.
- (10) To take account of the replacement of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) by EIOPA, references in Solvency II to CEIOPS should be deleted.
- (11) Directive 2009/138/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. This Directive shall apply to investment firms, market operators and third-country firms providing investment services or performing investment activities through the establishment of a branch in the Union.';

(b) in paragraph 2, point (d) is deleted;

(2) in Article 4, paragraph 1 is amended as follows:

(a) points (36) and (37) are replaced by the following:

'(36) 'management body' means the body or bodies of an investment firm or market operator which are appointed in accordance with national law, which are empowered to set the entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity.

Where this Directive refers to the management body and, pursuant to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall identify the bodies or members of the management body responsible in accordance with its national law, unless otherwise specified by this Directive;

(37) 'senior management' means natural persons who exercise executive functions within an investment firm or a market operator, and who are responsible and accountable to the management body for the day-to-day management of the entity,

including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;';

(c) points (52), (53), (54) and (55)(c) are deleted;

(3) Title V is deleted;

(4) Article 70 is amended as follows:

(a) in point (a) of paragraph 3, sub points (xxxvii) to (xxxx) are deleted;

(b) in paragraph 4, point (a) is replaced by the following:

'(a) Article 5 or Article 6(2) or Articles 34, 35, 39 or 44 of this Directive; or';

(c) in paragraph 6, point (c) is replaced by the following:

'(c) in the case of an investment firm, a market operator authorised to operate an MTF or OTF, or a regulated market, withdrawal or suspension of the authorisation of the institution in accordance with Article 8, and Article 43;';

(5) in Article 71, paragraph 6 is replaced by the following:

'6. Where a published criminal or administrative sanction relates to an investment firm, market operator, credit institution in relation to investment services and activities or ancillary services, or a branch of third-country firms authorised in accordance with this Directive, ESMA shall add a reference to the published sanction in the relevant register.';

(6) in Article 77, in the first subparagraph of paragraph 1, the introductory sentence is replaced by the following:

'Member States shall provide, at least, that any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council*, performing in an investment firm or a regulated market the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

* Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).';

(7) Article 89 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The delegation of power referred to in Article 2(3), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13),

Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 52(4), Article 54(4), Article 58(6), and Article 79(8) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.';

(b) paragraph 3 is replaced by the following:

'3. The delegation of powers referred to in Article 2(3), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 52(4), Article 54(4), Article 58(6), and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(c) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 2(3), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 52(4), Article 54(4), Article 58(6) and Article 79(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.';

(8) in Article 90, paragraphs 2 and 3 are deleted;

(9) in paragraph 1 of Article 93, the second subparagraph is replaced by the following:

'Member States shall apply those measures from 3 January 2018.';

(10) in Annex I, Section D is deleted.

Article 2

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(1) In Article 112(4), the following sub-paragraphs are added:

'Once the application is deemed complete by the supervisory authorities, they shall inform EIOPA of the application.'

Upon request by EIOPA, the supervisory authorities shall provide EIOPA with all the documentation submitted by the undertaking in its application.

EIOPA may issue an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within 4 months of receipt by the supervisory authority of the complete application.

Where such an Opinion is issued, the supervisory authority shall take its decision as referred to in the first subparagraph in conformity with that Opinion, or provide reasons in writing to EIOPA and to the applicant where the decision was not taken in conformity with that Opinion.';

(2) Article 231 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first sub-paragraph is replaced by the following:

'1. In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate with each other and with EIOPA, to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.';

(ii) the third sub-paragraph is replaced by the following:

'The group supervisor shall inform the other members of the college of supervisors of the receipt of the application and forward the complete application, including the documentation submitted by the undertaking, to college members, including EIOPA, without delay.';

(b) A new paragraph 2b is added as follows

'2b. Where EIOPA considers that an application as referred to in the first paragraph presents particular issues with respect to consistency in internal model application approvals across the Union, EIOPA may issue an Opinion to the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within 4 months of receipt by the group supervisor of the complete application.

Where such an Opinion is issued, the supervisory authorities shall take their joint decision as referred to in the second paragraph in conformity with that Opinion, or

provide reasons in writing to EIOPA and the applicant where the joint decision was not taken in conformity with that Opinion.';

(c) paragraph 3 is amended as follows:

(i) the first subparagraph is replaced by the following:

'If, within the six-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010 or EIOPA is assisting the supervisory authorities on its own initiative in accordance with Article 19(1)(b) of that Regulation, the group supervisor shall defer its decision until EIOPA adopts a decision in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's adopted decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

(ii) the first sentence of the third subparagraph is replaced by the following:

'Where EIOPA does not adopt a decision as referred to in the second subparagraph in accordance with Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take a final decision.';

(d) In paragraph 6, the second sub-paragraph is replaced by the following:

'The group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned and of EIOPA expressed during that six-month period.';

(e) In paragraph 6, the third sub-paragraph is replaced by the following:

'The group supervisor shall provide the applicant, the other supervisory authorities concerned and EIOPA with a document setting out its fully reasoned decision.';

(f) A new paragraph 6a is added:

'6a. After the six month period referred to in paragraph 2 and before the group supervisor takes a decision as referred to in paragraph 6, the undertaking which submitted the application in accordance with paragraph 1 may request that EIOPA assist the supervisory authorities in reaching an agreement, in accordance with Article 19 of Regulation (EU) No 1094/2010.

The group supervisor shall defer its decision until EIOPA adopts a decision in accordance with Article 19(3) of Regulation (EU) No 1094/2010 and shall take its decision in conformity with EIOPA's adopted decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall adopt its decision within 1 month from the end of the conciliation period referred to in Article 19(2) of Regulation (EU) No 1094/2010.

Where EIOPA does not adopt a decision as referred to in the third subparagraph in accordance with Article 19(3) of Regulation (EU) 1094/2010 of that Regulation, the group supervisor shall take a final decision. The group supervisor's decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.';

- (3) New Articles 231a and 231b are inserted as follows:

'Article 231a
Supervisory approval regarding internal models

1. EIOPA may, at its own initiative or at the request of supervisory authorities or insurance or reinsurance undertakings, issue an Opinion to the supervisory authorities in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010, on internal models and approvals of internal model applications as set out in Articles 112 to 127, Article 230, Article 231 and Article 233, with a view to foster supervisory convergence.

Where EIOPA issues an Opinion as referred to in the first subparagraph, the supervisory authorities concerned shall take their decision or joint decision, as applicable in conformity with that Opinion, or provide reasons in writing to EIOPA and the applicant where the decision or joint decision is not taken in conformity with that Opinion.

2. Where supervisory authorities carry out joint on-site inspections, in which EIOPA staff participate in accordance with Article 21 of Regulation (EU) No 1094/2010, of undertakings or groups applying a full or partial internal model pursuant to Articles 112 to 127, 230, 231 or 233, EIOPA staff shall produce a specific report on the internal model. That report shall be submitted to the EIOPA Executive Board.

Article 231b
Review

1. EIOPA shall, on an annual basis, report to the European Parliament, the Council and the Commission on general issues supervisory authorities have dealt with in the process of approving internal models or changes thereto pursuant to Article 112 to 127, 230, 231 and 233.

Supervisory authorities shall provide EIOPA with the information EIOPA considers relevant to produce such a report.

2. EIOPA shall submit to the Commission, by 1 January 2020 and after conducting a public consultation, an Opinion on the application of Articles 112 to 127, Article 230, Article 231 and Article 233 by supervisory authorities, including delegated acts and implementing

technical standards adopted pursuant thereto. That Opinion shall also assess any divergences in internal models within the Union.

3. Based on the opinion submitted by EIOPA in accordance with paragraph 2, the Commission shall submit a report to the European Parliament and the Council on the application of Articles 112 to 127, Article 230, Article 231 and Article 233 by supervisory authorities, including delegated acts and implementing technical standards adopted pursuant thereto, by 1 January 2021.';

(4) In Article 237, paragraph 3, the first sentence of the third subparagraph is replaced by the following:

'If EIOPA does not adopt a decision as referred to in the second subparagraph under Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take a final decision.'; and

(5) In Article 248, the third subparagraph of paragraph 4 is deleted.

Article 3

Transposition

1. Member States shall adopt and publish, by [12/18 months as of entry into force], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.
2. Member States shall apply the measures with respect to Article 1 from [36 months as of entry into force] and with respect to Article 2 from [the date of application of amendment to the EIOPA Regulation].

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President