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INFORMATION NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council

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 transposition and application and the date of repeal of certain Directives
– Outcome of the European Parliament's first reading
(Strasbourg, 18 to 21 November 2013)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the Committee on Economic and Monetary Affairs presented a compromise amendment to the proposal for a Directive. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 21 November 2013, the plenary adopted the compromise amendment. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto ¹.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendment to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Insurance and reinsurance (amendment to Solvency II) *I**

European Parliament legislative resolution of 21 November 2013 on the 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 transposition and application and the date of repeal of certain Directives (COM(2013)0680 – C7-0315/2013 – 2013/0327(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0680),
 - having regard to Article 294(2) and Article 53(1) and Article 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0315/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 55 and 46(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0352/2013),
- A. Whereas for reasons of urgency it is justified to proceed to the vote before the expiry of the deadline of eight weeks laid down in Article 6 of Protocol No 2 on the application of the principles of subsidiarity and proportionality;
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 21 November 2013 with a view to the adoption of Directive 2013/.../EU of the European Parliament and of the Council amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Solvency I)

(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 Article 62 thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure¹,

Whereas:

- (1) Directive 2009/138/EC of the European Parliament and of the Council² provides a modern, risk-based system for the regulation and supervision of insurance and reinsurance undertakings of the Union. That system is essential in order to ensure a safe and solid insurance sector that can provide sustainable insurance products and support the real economy by encouraging long-term investments and additional stability.
- (2) Directive 2011/89/EU of the European Parliament and of the Council³ makes certain amendments to Articles 212 to 262 of Directive 2009/138/EC, which are to be applicable from 10 June 2013.

¹ Position of the European Parliament of 21 November 2013.

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, L 335, 17.12.2009, p.1).

³ Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC regarding the supplementary supervision of financial entities in a financial conglomerate (OJ L 326, 8.12.2011, p. 113).

- (3) Directive 2012/23/EU of the European Parliament and of the Council¹ amends Directive 2009/138/EC by postponing the date for transposition from 31 October 2012 to 30 June 2013, the date of application from 1 November 2012 to 1 January 2014 and the date of repeal of the existing insurance and reinsurance Directives² (collectively referred to as 'Solvency I') from 1 November 2012 to 1 January 2014.

¹ Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012 amending Directive 2009/138/EC as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (OJ L 249, 14.9.2012, p. 1).

² Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession (OJ 56, 4.4.1964, p. 878/64); First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3); Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 20); Council Directive 76/580/EEC of 29 June 1976 amending Directive 73/239/EEC (OJ L 189, 13.7.1976, p. 13); Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance (OJ L 151, 7.6.1978, p. 25); Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive (73/239/EEC) (OJ L 339, 27.12.1984, p. 21); Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (OJ L 185, 4.7.1987, p. 77); Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services (OJ L 172, 4.7.1988, p. 1); Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1); Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (OJ L 330, 5.12.1998, p. 1); Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings (OJ L 110, 20.4.2001, p. 28); Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1); Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L 323, 9.12.2005, p. 1).

- (4) On 19 January 2011, the Commission adopted a proposal (the 'Omnibus II proposal') to amend, inter alia, Directive 2009/138/EC in order to take into account the new supervisory architecture for insurance, namely the setting-up of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA). The Omnibus II proposal also includes provisions to postpone the date for transposition and the date of application of Directive 2009/138/EC, and the date of repeal of Solvency I, and serves as a means to adapt Directive 2009/138/EC to the entry into force of the Treaty on the Functioning of the European Union by converting the provisions empowering the Commission to adopt implementing measures into provisions empowering the Commission to adopt delegated and implementing acts.
- (5) Given the complexity of the Omnibus II proposal, there is a risk that it will not have entered into force before the date for transposition and the date of application of Directive 2009/138/EC. Leaving those dates unchanged would result in Directive 2009/138/EC being implemented before the entry into force of the transitional rules and of relevant adaptations, including further clarification of delegated and implementing act empowerments, provided for by the Omnibus II proposal.
- (6) In order to avoid overly burdensome legislative obligations for Member States under Directive 2009/138/EC and later under the new supervisory architecture envisaged by the Omnibus II proposal, it is therefore appropriate to postpone the date for transposition and the date of application of Directive 2009/138/EC, allowing supervisors and insurance and reinsurance undertakings sufficient time to prepare for the application of that new architecture.
- (7) It is evident from the chronological order of events that the postponed date for transposition and date of application of Directive 2009/138/EC should also apply to the amendments thereto which were made by Directive 2011/89/EC.
- (8) For reasons of legal certainty, the date of repeal of Solvency I should be postponed accordingly.

- (9) Given the very short period of time before the relevant dates laid down in Directive 2009/138/EC, this Directive should enter into force without delay.
- (10) Consequently, it is justified to apply the exception for urgent cases provided for in Article 4 of Protocol No 1 on the role of national parliaments in the European Union in this case as regards the transmission to national parliaments of the proposal for this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2009/138/EC is amended as follows:

1. Article 309(1) is amended as follows:
 - (a) in the first subparagraph, the date of “30 June 2013” is replaced by that of “**31 March** 2015”;
 - (b) in the second subparagraph, the date of “1 January 2014” is replaced by that of “1 January 2016”.
2. In the first paragraph of Article 310, the date of “1 January 2014” is replaced by that of “1 January 2016”.
3. In the second paragraph of Article 311, the date of “1 January 2014” is replaced by that of “1 January 2016”.

Article 2

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

Article 3

This Directive is addressed to the Member States.

Done at ,

For the European Parliament
The President

For the Council
The President
