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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	COREPER II and the Council
No. prev. doc.:	12782/15 + ADD 1
No. Cion doc.:	C(2015) 6588 final + Annexes 1 to 3
Subject:	COMMISSION DELEGATED REGULATION (EU) …/... of 30.9.2015 amending Commission Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings = intention not to raise objections to a delegated act

1. The Commission submitted on 30 September 2015 the above delegated act to the Council in accordance with the procedure set out in Article 290 TFEU and Article 301a of Directive 2009/138/EC [1],

2. In accordance with Article 301a(5) of Directive 2009/138/EC, the Council may object to this delegated act within a period of three months, i.e. until 30 December 2015.

[1] 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. 1–155.

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3. Following the silence procedure within the framework of the Working Party on Financial Services, which expired on 20 November 2015, only the CZ delegation indicated that it will oppose to the delegated act. As the requirement for the Council to object to the delegated act is a qualified majority, this means that the Council has no intention to object this delegated act.

4. It is therefore suggested that Coreper recommend that the Council:

- confirm that it has no intention to object to the delegated act and that the Commission and the European Parliament are to be informed thereof. This implies that, unless the European Parliament objects to it, the delegated act shall be published and enter into force in accordance with Article 301a(5) of Directive 2009/138/EC, and

- enters into its minutes the statements, as set out in the Annex.

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ANNEX

Statement by the CZ delegation

The Czech Republic would like to thank to the Council for the opportunity to raise objections on delegated regulation amending delegated regulation (EU) 2015/35 adopted by the Commission on 30 September 2015.

Although the Czech Republic is well aware of the Capital Markets Union project and of the Commission´s efforts to boost growth of the EU economy, one still has to keep in mind that the primary role of the insurers is to meet its liabilities towards the policyholders and hence protect their interests. Investments of insurance companies should therefore be considered a secondary activity.

Generally, we disagree with the Commission´s position that the delegated regulation aim at removing barriers to long-term investments. The requirements of the Solvency II (e.g. higher calibration for this type on investments) do not constitute a barrier to the investment in a situation when they reflect risks connected with a certain investment type. A prudential attitude in this case is reasoned by risks connected to the long-term investments (low liquidity, volatility, absence of data for the calibration etc.) and it cannot be automatically interpreted as a barrier to the investments.

1. A new infrastructure asset class

The Czech Republic does not find the delegated regulation conceptual and in compliance with the main principles on which the Solvency II regime is based. Directive 2009/138/EC, among others, regulates the amount of capital that EU insurance companies must hold to be able to meet their liabilities.

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Solvency II adopts an economic risk-based approach providing incentives for insurance and reinsurance undertakings to properly measure and manage their risks, which shall then be reflected in the capital requirement. The regulation sets specific rules for the valuation of assets and liabilities, including technical provisions, in order to efficiently assess the risk exposure. On that account, the insurance companies should be allowed to invest only in those securities, projects and instruments, where the associated risks are identifiable, manageable and monitored, and shall hold adequate capital which corresponds to the risks assumed.

The proposed delegated regulation of the Commission is now trying to motivate the insurance undertakings to invest in assets with higher risk exposures (we are not convinced that the infrastructure project have lower risk profile) in exchange for the capital relief. For this reason, we believe this concept completely contradicts the main principles of the Solvency II directive. Such measures could distort the insurance companies´ investment behaviour and hence could threaten their financial stability.

We are also concerned about the fact that the delegated regulation on infrastructure investments is based mostly on experts' opinions and lacks empirical evidence and sound data analysis in the impact assessment.

Although we understand that the lack of empirical evidence might make it very difficult to develop new methods and come to reliable conclusions, we strongly disagree with the assumptions made only by comparison with the portfolio of corporate bonds.

Moreover, we would like to point out shortcomings of dataset used to calibrate standard formula parameters for equity infrastructures. More concretely, the calibration is based on dataset containing only a very limited number of UK companies. In addition, it is planned to apply results of this insufficient sample to all EU companies. We are confident that a much larger sample would be necessary.

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As regards debt-based infrastructure investments, there are no reasons presented for indicating that the most suitable approach is to combine credit and liquidity part of the spread. At the same time there is no reasoning for using lower calibration of the proposed spread 30-39% as regards equity based infrastructure investments. The proposed spread is still lower than the calibration for type 1 equity according to standard formula for the SCR calculation.

Without proper analysis the Commission should not intend to enlarge the scope of infrastructure investments eligible for capital relief above the EIOPA proposal, which sets a definition of the eligible infrastructure investments.

For all these reasons we cannot agree to the introduction of a capital relief for investments in infrastructure debt and equities, as such an approach is not sufficiently prudent and in the end may threaten the insurance undertakings´ stability and the interests of the policyholders.

2. The capital treatment of European Long Term Investment Funds

We do not consider it prudent to provide insurance undertakings the capital relief for investing in European long-term investment funds (ELTIFs). Insurance companies cannot efficiently assess the risk exposure of the funded projects due to the information asymmetry caused by insufficient disclosure. The regulation of these European funds does not cover the risk exposure and the transparency requirements of the projects to which ELTIF invests (as does for example MiFID to MTFs and regulated markets). It covers only the transparency of the ELTIF itself which is insufficient for the insurance company in order to assess the risk.

3. Multilateral trading facilities

Multilateral trading facilities unlike regulated markets do not ensure complete transparency either since the trading of equities can occur without consent from the issuer in which case no disclosure or prospectus is required.

In case of MTF it is questionable whether these instruments will meet the liquidity conditions (e.g. in the UK the markets are very liquid, on the contrary in the Czech Republic the amount of transactions is very low).

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4. The scope of the equity transitional measure

We disagree with the amended scope of the transitional measure (Article 308b(13) in Omnibus II) that enables to use a lower standard parameter for calculating the equity risk sub-module for equity investment purchased before 1 January 2016.

Although we understand the aim presented by the Commission, we deem an extended scope proposed as inappropriate change since it leads to underestimation of risks connected with type 2 equities which are considered of significantly lower quality compared to type 1. Moreover, we are confident that such an important extension significantly changes an importance and impact of transitional measure which was formulated as a part of the Omnibus II agreement and in terms of the original scope reflected in the delegated regulation. Therefore we prefer to respect compromises reached and not to change the original scope of this transitional measure.

From our point of view, even equities held within collective investment undertaking or investment as funds might be using the lower standard parameter but only under the condition that they would fulfil the same requirements and be treated equally to directly held equities. Otherwise, it could be considered as preferential treatment of one of the equities holding.

Consequently, if the ITS requirements are not fulfilled, it should not be allowed to use the lower standard parameter for calculating the capital requirement.

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Statement by the CZ and HU delegations

The Czech Republic and Hungary would like to point out that the current prudential attitude of Solvency II in case of infrastructure projects is adequate and is reasoned by risks connected to the long-term investments (low liquidity, volatility, absence of data for the calibration etc.). On that account, the insurance companies should be allowed to invest only in those securities, projects and instruments, where the associated risks are identifiable, manageable and monitored, and shall hold adequate capital which corresponds to the risks assumed. The proposed Delegated Regulation inappropriately motivates the insurance undertakings to invest in assets with higher risk exposures in exchange for the capital relief, which completely contradicts the main principles of the Solvency II directive.

We are also concerned about the fact that the delegated regulation is based mostly on experts' opinions and lacks empirical evidence and sound data analysis in the impact assessment. We strongly disagree with the assumptions made only by comparison with the portfolio of corporate bonds. Moreover, we would like to highlight the insufficient sample of a very limited number of UK companies used to create a dataset for calibration of standard formula parameters for equity infrastructures. We are confident that a much larger sample would be necessary.

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