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Delegations will find attached document D089428/01.

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Brussels, **XXX**
[...] (2023) **XXX** draft

D089428/01

COMMISSION REGULATION (EU) .../...

of **XXX**

**adopting certain international accounting standards in accordance with Regulation (EC)
No 1606/2002 of the European Parliament and of the Council**

(Text with EEA relevance)

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of **XXX**

adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards¹, and in particular Article 3(1) thereof,

Whereas:

- (1) Article 4 of Regulation (EC) No 1606/2002 requires that, for each financial year starting on or after 1 January 2005, publicly traded companies governed by the law of a Member State prepare their consolidated accounts in conformity with international accounting standards as defined in Article 2 of that Regulation, to be adopted by way of Commission Regulation.
- (2) Commission Regulation (EC) No 1126/2008² has adopted international accounting standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB) until 15 October 2008. That Regulation was amended in order to include the standards and the related interpretations issued or adopted by the IASB and adopted by the Commission until 8 September 2022 in accordance with Regulation (EC) No 1606/2002.
- (3) On 18 May 2017, the IASB published International Financial Reporting Standard (IFRS) 17 *Insurance Contracts* ('IFRS 17'), and on 25 June 2020 amendments to that IFRS 17.
- (4) IFRS 17 provides a comprehensive approach to the accounting for insurance contracts. The objective of IFRS 17 is to ensure that a company provides relevant information in its financial statements that faithfully represents the insurance contracts. That information gives a solid basis for users of financial statements to assess the effect that insurance contracts have on the company's financial position, financial performance and cash flows.
- (5) IFRS 17 applies to insurance contracts, reinsurance contracts as well investment contracts with discretionary participation features. Within the Union there are many different life insurance and life savings contracts with an approximate total best estimate liability of EUR 5,9 trillion (excluding unit linked contracts). In several

¹ OJ L 243, 11.9.2002, p. 1.

² Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

Member States, some of those contracts have direct participation and discretionary features, which allow for sharing of risks and cash flows between different generations of policyholders.

- (6) In a number of Member States, life insurance contracts are also managed across generations in order to mitigate exposure to interest rate and longevity risks and have a dedicated pool of assets underlying the insurance liability, but those contracts do not have direct participation features as defined by IFRS 17. Where meeting the requirements of Directive 2009/138/EC of the European Parliament and of the Council³, and upon approval by the insurance supervisors, some of those contracts can apply the matching adjustment for the computation of their Solvency II ratio.
- (7) The endorsement advice of the European Financial Reporting Advisory Group (EFRAG) concluded that IFRS 17 meets the criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. However, EFRAG did not reach consensus on whether the grouping of intergenerationally-mutualised and cash flow matched contracts into annual cohorts meets the technical endorsement criteria, or is conducive to the European public good. This is in line with the views expressed by stakeholders on EFRAG's endorsement advice and the views of Member State experts in the Accounting Regulatory Committee.
- (8) Union companies should be able to apply IFRS 17 as issued by the IASB to facilitate listing in third countries, or to meet global investors' expectations.
- (9) However, the annual cohort requirement as a unit of account for groups of insurance and investment contracts does not always reflect the business model, nor the legal and contractual features of intergenerationally-mutualised and cash flow matched contracts referred to in Recitals (5) and (6). Those contracts represent more than 70 % of the total life insurance liabilities in the Union. The annual cohort requirement applied to such contracts does not always have a favourable cost-benefit balance.
- (10) In light of the global capital market context of IFRS, deviations from IFRS should be limited to exceptional circumstances and narrow in scope.
- (11) Therefore, notwithstanding the definition of group of insurance contracts set out in Appendix A of IFRS 17 in the Annex to this Regulation, Union companies should have the option to exempt intergenerationally mutualised and cash flow matched contracts from the annual cohort requirement of IFRS 17.
- (12) Investors should be able to understand if a company has applied the exemption from the annual cohort requirement for groups of contracts. A company should therefore disclose, in accordance with International Accounting Standard 1 *Presentation of Financial Statements*, in the notes to its financial statements, the use of the exemption as a significant accounting policy and provide other explanatory information such as for which portfolios it has applied the exemption. This should not imply a quantitative assessment of the impact of the use of the optional exemption from the annual cohort requirement.
- (13) The Commission should by 31 December 2027 review the exemption from the annual cohort requirement for intergenerationally-mutualised and cash flow matched contracts, taking into account the IASB post-implementation review of IFRS 17.

³ 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).

- (14) The copyright, the database rights, and any other intellectual property rights in the IFRS and related interpretations issued by the International Financial Reporting Interpretations Committee are owned by the IFRS Foundation. A copyright notice should therefore be included in the Annex to this Regulation.
- (15) Regulation (EC) 1126/2008 has been amended many times. In order to simplify Union legislation on international accounting standards, it is appropriate, for the sake of clarity and transparency, to replace that Regulation. Regulation (EC) No 1126/2008 should therefore be repealed.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The international accounting standards set out in the Annex are adopted.

Article 2

A company may choose not to apply the requirement laid down in paragraph 22 of International Financial Reporting Standard 17 Insurance Contracts ('IFRS 17') in the Annex to this Regulation to:

- (a) groups of insurance contracts with direct participation features and groups of investment contracts with discretionary participation features as defined in Appendix A of IFRS 17 in the Annex to this Regulation, and with cash flows that affect or are affected by cash flows to policyholders of other contracts as laid down in paragraphs B67 and B68 of Appendix B of IFRS 17 in the Annex to this Regulation;
- (b) groups of insurance contracts that are managed across generations of contracts and that meet the conditions laid down in Article 77b of Directive 2009/138/EC and have been approved by supervisory authorities for the application of the matching adjustment.

When a company does not apply the requirement laid down in paragraph 22 of IFRS 17 in the Annex to this Regulation in accordance with paragraph (a) or (b) it shall disclose this in accordance with International Accounting Standard 1 *Presentation of Financial Statements* in the notes as a significant accounting policy and provide other explanatory information such as for which portfolios the company has applied this exemption.

Article 3

The Commission shall review the option laid down in Article 2 by 31 December 2027 and, where appropriate, propose to amend or end it.

Article 4

Regulation (EC) No 1126/2008 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 5

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*