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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 13 March 2024

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: C(2024) 1753 final

Subject: COMMISSION DELEGATED DECISION (EU) .../... of 14.3.2024 on the renewal of the determination that the solvency regime in force in the United States applicable to undertaking with their head office in that third country is provisionally equivalent to that laid down in Title I, Chapter VI of Directive 2009/138/EC of the European Parliament and of the Council

Delegations will find attached document C(2024) 1753 final.

Encl.: C(2024) 1753 final



EUROPEAN
COMMISSION

Brussels, 14.3.2024
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COMMISSION DELEGATED DECISION (EU)/...

of 14.3.2024

on the renewal of the determination that the solvency regime in force in the United States applicable to undertaking with their head office in that third country is provisionally equivalent to that laid down in Title I, Chapter VI of Directive 2009/138/EC of the European Parliament and of the Council

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Commission Delegated Decision (EU) 2015/2290¹ granting provisional equivalence under Article 227 of Solvency II to the US, among other non-EU jurisdictions, applies from 1 January 2016 and expires on 1 January 2026.

According to Article 227(6) of the Solvency II Directive²: “*provisional equivalence shall be subject to renewals for further periods of 10 years where the criteria referred to in paragraph 5 continue to be met. The Commission shall adopt any such delegated act in accordance with Article 301a and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010*”.

In 2023 following assistance by EIOPA it was concluded that the factual statements in the Commission’s Delegated Decision of 2015 with respect to the US have not changed. These factual statements are reiterated and updated in the current Commission Delegated Decision.

The Commission Delegated Decision puts forward the renewal of the US provisional equivalence for a period of 10 years starting with 01.01.2026.

The Commission will initiate the process of renewing provisional equivalence decisions for other third countries and take a final decision on the specific renewals after having received EIOPA’s assessments on the third countries concerned.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This Commission Delegated Decision as required by Better Regulation guidelines, was published for “Have your say” feedback and seven comments were received. The Commission services have analysed the comments received and concluded that the Commission Delegated Decision does not need modifications. Member States’ experts were consulted via the Expert Group on Banking, Payments and Insurance on 11.12.2023.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 227 of Solvency II relates to the equivalence for third-country insurers that are part of groups headquartered in the EU.

Article 227(6)³ of the Solvency II Directive clarifies that “provisional equivalence shall be subject to renewals for further periods of 10 years where the criteria referred to in paragraph 5 continue to be met”.

¹ Commission Delegated Decision (EU) 2015/2290 of 5 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries (OJ L 323, 9.12.2015, p. 22, ELI: http://data.europa.eu/eli/dec_del/2015/2290/0j)

² Consolidated text: 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) (recast) (Text with EEA relevance)Text with EEA relevance EUR-Lex - 02009L0138-20240109 - EN - EUR-Lex (europa.eu)

³ Idem 2

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on the renewal of the determination that the solvency regime in force in the United States applicable to undertaking with their head office in that third country is provisionally equivalent to that laid down in Title I, Chapter VI of Directive 2009/138/EC 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 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)¹, and in particular Article 227(6) thereof,

Whereas:

- (1) In Commission Delegated Decision (EU) 2015/2290², it was determined that the solvency regime in force in, *inter alia*, the United States and applicable to insurance and reinsurance undertakings with head offices in that third country is to be considered provisionally equivalent to the regime laid down in Title I, Chapter VI of Directive 2009/138/EC. That provisional equivalence was granted as of 1 January 2016 and for a period of 10 years. Article 227(6), second subparagraph of Directive 2009/138/EC provides for the possibility to renew that provisional equivalence for further periods of 10 years, provided that the criteria laid down in Article 227(5) of that Directive continue to be met and subject to a delegated act of the Commission to that effect. In addition, the European Insurance and Occupational Pensions Authority ('EIOPA') is to assist the Commission when taking such a decision.
- (2) The United States authorities and the Union authorities have regular dialogues to improve their mutual understanding of their insurance regulatory and supervisory regimes. It appeared from those dialogues, and from assistance provided by EIOPA, that the criteria referred to in Article 227(5) of Directive 2009/138/EC continue to be met by the solvency regime in force in the United States.
- (3) In the United States, insurers must comply with the applicable laws for each state in which they write policies, and insurance supervision is in the hands of independent state supervisors under state insurance commissioners. State capital adequacy requirements are based on the National Association of Insurance Commissioners (NAIC) Risk-Based Capital (RBC) Model Law, which has been adopted by all states.

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, ELI: <http://data.europa.eu/eli/dir/2009/138/oj>)

² Commission Delegated Decision (EU) 2015/2290 of 5 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries (OJ L 323, 9.12.2015, p. 22, ELI: http://data.europa.eu/eli/dec_del/2015/2290/oj)

The RBC standard formula covers the most material risks for each of the primary insurance types (life, property and casualty, and health), allowing for the use of internal models for specific products and risk modules. RBC is calculated by applying factors to various assets, and premium, claim, expense, and reserve items. There are four levels of quantitative capital requirements with different supervisory interventions in each case: Company Action Level, Regulatory Action Level, Authorised Control Level, and Mandatory Control Level. The United States regime has an Own Risk and Solvency Assessment for insurers comparable to the one laid down in Directive 2009/138/EC. Regarding reporting and transparency, there are standardised reporting requirements, covering mainly: business and performance, risk profile, valuation methods and assumptions used, capital requirements, and management. Financial statements, including the actuarial opinion and the auditor's statement, are to be publicly disclosed. State insurance commissioners may share confidential information with foreign supervisors, provided that the recipient agrees to maintain the confidentiality of that information. Those state insurance commissioners may also enter into agreements governing the sharing and use of confidential information.

- (4) Several Memoranda of Understanding on exchange of information have been signed between Union supervisors and insurance departments of the US states. Since the adoption of Delegated Decision (EU) 2015/2290/EC, a further eleven US states have become signatories to the Multilateral Memorandum of Understanding of the International Association of Insurance Supervisors. Confidentiality rules based on NAIC model laws, are incorporated into state legislation and require state supervisors and their staff to maintain the confidentiality of information received from foreign supervisors.
- (5) On the basis of the assistance provided by EIOPA and in the light of the solvency requirements applicable in the United States, it is clear that the criteria laid down in Article 227(5) of Directive 2009/138/EC continue to be met by solvency regime in force in the United States applicable to undertakings with their head office in that third country. It is therefore appropriate to renew the determination, laid down in Delegated Decision (EU) 2015/2290/EC, that that solvency regime is provisionally equivalent to that laid down in Title I, Chapter VI of Directive 2009/138/EC. The Commission may, however, undertake a specific review at any time where relevant developments make it necessary to re-assess the equivalence determined by this Decision, including international developments. Such regular or specific reviews could lead to the amendment or repeal of this Decision. The Commission should therefore continue to monitor, with the assistance of EIOPA, the evolution of the solvency regime in force in the United States and the fulfilment of the conditions on the basis of which this Decision has been adopted.
- (6) To give the Union businesses the necessary legal certainty, the provisional decisions should be renewed well in advance, in line with the Commission's practice. This decision covers the United States due to the fact that the Commission has all information necessary for the renewal of the determination that the solvency regime in force in that third country is provisionally equivalent to that laid down in Title I, Chapter VI of Directive 2009/138/EC. The Commission will initiate the process of renewing provisional equivalence decisions for other third countries and take a final decision on the specific renewals after having received EIOPA's assessments on the third countries concerned.

HAS ADOPTED THIS DECISION:

Article 1

The solvency regime in force in the United States and applicable to insurance and reinsurance undertakings with head offices in the United States shall continue to be considered as provisionally equivalent to the regime laid down in Title I, Chapter VI, of Directive 2009/138/EC.

Article 2

A renewal of the provisional equivalence is granted from 1 January 2026 to 31 December 2035.

Article 3

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

Done at Brussels, 14.3.2024

*For the Commission
The President
Ursula VON DER LEYEN*