



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2011/0006(COD)

19.7.2011

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority
(COM(2011)0008 – C7-0027/2011 – 2011/0006(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Burkhard Balz

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	188
EXPLANATORY STATEMENT.....	188

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority
(COM(2011)0008 – C7-0027/2011 – 2011/0006(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0008),
 - having regard to Article 294(2) and Articles 50, 53, 62 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0027/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of ...,
 - having regard to the opinion of the European Economic and Social Committee of ...,–
having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0000/2011),
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.

Amendment 1

Proposal for a directive Title

Text proposed by the Commission

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2003/71/EC and 2009/138/EC in respect of

Amendment

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives **2002/92/EC, 2003/41/EC**, 2003/71/EC and

the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

2009/138/EC **and Regulation (EC) No 1060/2009** in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

Or. en

Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) On **23 September 2009**, the **Commission** adopted **proposals for** three Regulations establishing the **European System of Financial Supervisors including the creation of the three** European Supervisory Authorities (**ESA**).

Amendment

(1) On **24 November 2010**, the **European Parliament and the Council** adopted three Regulations establishing **the European Insurance and Occupational Pensions Authority (EIOPA), the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) (collectively referred to as the European Supervisory Authorities (ESAs)), which are part of the European System of Financial Supervision.**

Or. en

Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) In order for the European System of Financial **Supervisors** (ESFS) to work effectively, changes to Union legislation in the field of operation of the three Authorities are necessary. Such changes concern the definition of the scope of certain powers of the ESAs, the integration of certain powers in existing processes established in relevant Union legislation

Amendment

(2) In order for the European System of Financial **Supervision** (ESFS) to work effectively, changes to Union legislation in the field of operation of the three Authorities are necessary. Such changes concern the definition of the scope of certain powers of the ESAs, the integration of certain powers in existing processes established in relevant Union legislation

and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.

and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.

Or. en

Amendment 4

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) The establishment of three ESAs should be accompanied by the development of a single rule book to ensure consistent harmonisation and uniform application and thus contribute to a more effective functioning of the internal market. The regulations establishing the ESFS provide that the ESAs may develop draft technical standards in the areas specifically set out in the relevant legislation, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. Whereas Directive .../... [*Omnibus I*] has identified a first set of such areas, this Directive should identify a further set of areas, in particular for *Directive* 2003/71/EC and *Directive* 2009/138/EC, without prejudice to adding further areas in the future.

Amendment

(3) The establishment of three ESAs should be accompanied by the development of a single rule book to ensure consistent harmonisation and uniform application and thus contribute to a more effective functioning of the internal market. The regulations establishing the ESFS provide that the ESAs may develop draft technical standards in the areas specifically set out in the relevant legislation, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. Whereas Directive *2010/78/EU of the European Parliament and of the Council of 24 November 2010 in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)** has identified a first set of such areas, this Directive should identify a further set of areas, in particular for *Directives* 2002/92/EC, 2003/41/EC, 2003/71/EC and 2009/138/EC, without prejudice to adding further areas in the future.

¹ OJ L 331, 15.12.2010, p. 120.

Or. en

Amendment 5

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. **The** technical standards adopted as delegated acts should further develop, specify and determine the conditions for consistent harmonisation of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should set conditions for the uniform application of legally binding Union acts. Technical standards should not involve policy choices.

Amendment

(6) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. **Regulatory** technical standards adopted as delegated acts should further develop, specify and determine the conditions for consistent harmonisation of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. On the other hand, **implementing** technical standards adopted as implementing acts should set conditions for the uniform application of legally binding Union acts. Technical standards should not involve policy choices.

Or. en

Amendment 6

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) In the case of regulatory technical standards it is appropriate to **introduce** the procedure provided for in Articles 10 to 14 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and

Amendment

(7) In the case of regulatory technical standards it is appropriate to **apply** the procedure provided for in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of

of Regulation (EU) No .../2010 [EIOPA]. Implementing technical standards should be adopted in accordance with the procedure provided for in Article 15 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA]. ***The European Council endorsed the four-level ‘Lamfalussy’ approach to make the regulatory process for Union financial legislation more efficient and transparent. The Commission is empowered to adopt level-2 measures in many areas, and a large number of level-2 Commission regulations and directives are in force. In cases where the technical standards are designed to further develop, specify or determine the conditions of application of such level-2 measures, they should be adopted only once the relevant level-2 measures has been adopted and should respect the content of that level-2 measure.***

Regulation (EU) No ***1095/2010, respectively***. Implementing technical standards should be adopted in accordance with the procedure provided for in Article 15 of Regulation (EU) No ***1093/2010***, of Regulation (EU) No ***1094/2010***, and of Regulation (EU) No ***1095/2010, respectively***. ***It should be recognised that regulatory technical standards are adopted as delegated acts under Article 290 TFEU and implementing technical standards are adopted as implementing acts under Article 291 TFEU.***

Or. en

Amendment 7

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) ***Binding*** technical standards contribute to a single rulebook for financial services legislation as endorsed by the European Council in its conclusions of June 2009. To the extent that certain requirements in Union legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, ***binding*** technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more

Amendment

(8) ***Regulatory and implementing*** technical standards contribute to a single rulebook for financial services legislation as endorsed by the European Council in its conclusions of June 2009. To the extent that certain requirements in Union legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, ***regulatory and implementing*** technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member

stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, where those legislative acts provide for such discretion.

States from requiring additional information or imposing more stringent requirements. **Regulatory and implementing** technical standards should therefore allow Member States to do so in specific areas, where those legislative acts provide for such discretion.

Or. en

Amendment 8

Proposal for a directive Recital 9

Text proposed by the Commission

(9) As set out in the regulations establishing the **ESFS**, before submitting the technical standards to the Commission, the ESA should, where appropriate, conduct open public consultations relating to them and analyse the potential related costs and benefits.

Amendment

(9) As set out in the regulations establishing the **ESAs**, before submitting the technical standards to the Commission, the **ESAs** should, where appropriate, conduct open public consultations relating to them and analyse the potential related costs and benefits.

Or. en

Amendment 9

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The Regulations establishing the **ESFS** provide for a mechanism to settle disagreements between **competent** national authorities. Where a **competent** authority disagrees with the procedure or content of an action or inaction by another **competent** authority in areas specified in legal acts of the Union in accordance with Regulation (EU) No .../ 2010 [**EBA**], Regulation (EU) No .../ 2010 [**ESMA**] and Regulation (EU)

Amendment

(11) The Regulations establishing the **ESAs** provide for a mechanism to settle disagreements between national **supervisory** authorities. Where a **supervisory** authority disagrees with the procedure or content of an action or inaction by another **supervisory** authority in areas specified in legal acts of the Union in accordance with Regulation (EU) No **1093/2010**, Regulation (EU) No **1094/2010**

No .../ 2010 [EIOPA], where the relevant legislation requires cooperation, coordination or joint decision-making by **competent** national authorities from more than one Member State, the ESA, at the request of one of the **competent** authorities concerned, should be able to assist the authorities in reaching an agreement within the time limit set by the ESA which should take into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the ESA should be able to settle the matter.

and Regulation (EU) No **1095/2010**, where the relevant legislation requires cooperation, coordination or joint decision-making by national **supervisory** authorities from more than one Member State, the ESA, at the request of one of the **supervisory** authorities concerned, should be able to assist the authorities in reaching an agreement within the time limit set by the ESA which should take into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the ESA should be able to settle the matter.

Or. en

Amendment 10

Proposal for a directive Recital 12

Text proposed by the Commission

(12) The regulations establishing the ESAs require that the cases where the mechanism to settle disagreements between **competent** national authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a **first** set of such cases and should be without prejudice to adding further cases in the future. This Directive should not prevent the ESAs from acting in accordance with other powers or fulfilling tasks specified in their establishing regulations, including non-binding mediation and contributing to the consistent, efficient and effective application of legal acts of the Union. Moreover, in those areas where some form of non-binding mediation is already established in the relevant legal act, or where there are time limits for joint decisions to be taken by one or more **competent** national authorities,

Amendment

(12) The regulations establishing the ESAs require that the cases where the mechanism to settle disagreements between national **supervisory** authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a **second** set of such cases and should be without prejudice to adding further cases in the future. This Directive should not prevent the ESAs from acting in accordance with other powers or fulfilling tasks specified in their establishing regulations, including non-binding mediation and contributing to the consistent, efficient and effective application of legal acts of the Union. Moreover, in those areas where some form of non-binding mediation is already established in the relevant legal act, or where there are time limits for joint decisions to be taken by one or more national **supervisory** authorities,

amendments are needed to ensure clarity and minimum disruption of the process for reaching a joint decision, but also that where necessary, the ESAs should be able to resolve disagreements. The binding procedure for the settlement of disagreements is designed to solve situations where *competent supervisors* cannot resolve, among themselves, procedural or substantive issues relating to compliance with legal acts of the Union.

amendments are needed to ensure clarity and minimum disruption of the process for reaching a joint decision, but also that where necessary, the ESAs should be able to resolve disagreements. The binding procedure for the settlement of disagreements is designed to solve situations where *national supervisory authorities* cannot resolve, among themselves, procedural or substantive issues relating to compliance with legal acts of the Union.

Or. en

Amendment 11

Proposal for a directive Recital 13

Text proposed by the Commission

(13) This Directive should therefore identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the *supervisors* may not be able to resolve the matter on their own. In such a situation, one of the *supervisors involved* should be able to raise the issue with the competent ESA. That ESA should act in accordance with *the procedure set out in* its establishing regulation and *in* this Directive. It should be able to require the *competent* authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the *competent* authorities concerned. In cases where the relevant legal act of the Union confers discretion on Member States, decisions taken by a ESA should not replace the exercise of discretion by the *competent* authorities in compliance with Union law.

Amendment

(13) This Directive should therefore identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the *national supervisory authorities* may not be able to resolve the matter on their own. In such a situation, one of the *national supervisory authorities concerned* should be able to raise the issue with the competent ESA. That ESA should act in accordance with its establishing regulation and *with* this Directive. It should be able to require the *supervisory* authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the *supervisory* authorities concerned. In cases where the relevant legal act of the Union confers discretion on Member States, decisions taken by a ESA should not replace the exercise of discretion by the *supervisory* authorities in compliance with Union law.

Amendment 12

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) 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)⁸ provides for joint decisions as regards the approval of applications to use an internal model at group and subsidiary levels, the approval of applications to make a subsidiary subject to Articles 238 and 239 of that Directive and the identification of the group supervisor on a different basis from the criteria set out in Article 247 of that Directive. In all of these areas, an amendment should clearly state that in the event of disagreement, the European Insurance and Occupational Pensions Authority (EIOPA) may resolve the disagreement using the process outlined in Regulation .../... [EIOPA]. This approach **would make** it clear that disagreements **can** be resolved and cooperation strengthened before a decision is **made** or issued to an institution. EIOPA's **role in resolving** disagreements **is to mediate** between the conflicting views of the supervisory authorities **rather than to substitute judgements in the matters concerned. The fact that EIOPA has acted to mediate a specific disagreement should not be understood as meaning that EIOPA should have an ongoing role in the supervision of the subject matter of the application.**

Amendment

(14) 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)⁸ provides for joint decisions as regards the approval of applications to use an internal model at group and subsidiary levels, the approval of applications to make a subsidiary subject to Articles 238 and 239 of that Directive and the identification of the group supervisor on a different basis from the criteria set out in Article 247 of that Directive. In all of these areas, an amendment should clearly state that in the event of disagreement, the European Insurance and Occupational Pensions Authority (EIOPA) may resolve the disagreement using the process outlined in Regulation **1094/2010**. This approach **makes** it clear that **while EIOPA should not replace the exercise of discretion by the supervisory authorities in compliance with Union law, it should be possible for disagreements to be resolved and cooperation to be strengthened before a final decision is taken** or issued to an institution. EIOPA **should resolve** disagreements **by mediating** between the conflicting views of the supervisory authorities.

Amendment 13

Proposal for a directive Recital 15

Text proposed by the Commission

(15) The new supervisory architecture established by the ESFS will require national supervisory authorities to cooperate closely with the ESAs. Amendments to the relevant legislation should ensure there are no legal obstacles to the information sharing obligations included in the regulations *proposed by the Commission* establishing the ESAs.

Amendment

(15) The new supervisory architecture established by the ESFS will require national supervisory authorities to cooperate closely with the ESAs. Amendments to the relevant legislation should ensure there are no legal obstacles to the information sharing obligations included in the regulations establishing the ESAs.

Or. en

Amendment 14

Proposal for a directive Recital 16

Text proposed by the Commission

(16) In areas where the Commission is currently empowered by Directive 2009/138/EC to adopt implementing measures where these measures are non-legislative acts of general application to supplement or amend certain non-essential elements of that Directive in the sense of Article 290 TFEU, the Commission should be empowered to adopt delegated acts in accordance with that Article.

Amendment

(16) In areas where the Commission is currently empowered by Directive 2009/138/EC to adopt implementing measures where these measures are non-legislative acts of general application to supplement or amend certain non-essential elements of that Directive in the sense of Article 290 TFEU, the Commission should be empowered to adopt delegated acts in accordance with that Article *or regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.*

Or. en

Amendment 15

Proposal for a directive Recital 17

Text proposed by the Commission

(17) In order to allow for the consistent calculation of technical provisions by insurance and reinsurance undertakings under Directive 2009/138/EC, it is necessary for a central body to derive, publish, and update ***certain technical information related to*** the risk-free interest rate term structure, ***which takes*** account of observations in the financial market, ***and for the body to be able to do this on a regular basis***. Given the technical and insurance related nature of these tasks, they should be carried out by EIOPA.

Amendment

(17) In order to allow for the consistent calculation of technical provisions by insurance and reinsurance undertakings under Directive 2009/138/EC, it is necessary for a central body to derive, publish, and update the risk-free interest rate term structure ***on a regular basis, taking*** account of observations in the financial market. Given the technical and insurance related nature of these tasks, they should be carried out by EIOPA.

Or. en

Amendment 16

Proposal for a directive Recital 18

Text proposed by the Commission

(18) In order to ensure that certain technical inputs to the Solvency Capital Requirement (SCR) using the standard formula are provided on a harmonised basis, for instance to allow for harmonised approaches ***toward*** the use of ratings, specific tasks should be assigned to EIOPA. The detailed manner for the exercise of such tasks should be further specified in measures to be adopted by delegated act.

Amendment

(18) In order to ensure that certain technical inputs to the Solvency Capital Requirement (SCR) using the standard formula are provided on a harmonised basis, for instance to allow for harmonised approaches ***towards*** the use of ratings, specific tasks should be assigned to EIOPA. ***Recognition of rating agencies should be aligned and made consistent with Directive 2006/48/EC, including the upcoming revision of that Directive, and Regulation (EC) No 1060/2009. Overlap with Regulation (EC) No 1060/2009 should be avoided and therefore a role for the Joint Committee of supervisory authorities is justified. EIOPA should***

make optimal use of ESMA's competences and experience. The detailed manner for the exercise of such tasks should be further specified in measures to be adopted by delegated *or implementing* act.

Or. en

Amendment 17

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) In order to ensure a harmonised approach under Directive 2009/138/EC in determining where an extension to the recovery period in cases of breaches of the SCR is permitted, the conditions which constitute ‘an exceptional fall in the financial markets’ should be specified. EIOPA, *upon request from the supervisory authority concerned*, should be responsible for determining whether those conditions have been fulfilled and the Commission should be empowered to adopt measures by means of delegated acts specifying the relevant procedures to be followed.

Amendment

(19) In order to ensure a harmonised approach under Directive 2009/138/EC in determining where an extension to the recovery period in cases of breaches of the SCR is permitted, the conditions which constitute ‘an exceptional fall in the financial markets’ should be specified. EIOPA should be responsible for determining whether those conditions have been fulfilled and the Commission should be empowered to adopt measures by means of delegated *and implementing* acts specifying the relevant procedures to be followed.

Or. en

Amendment 18

Proposal for a directive – amending act

Recital 22

Text proposed by the Commission

(22) The development of international convergence toward risk-based solvency regimes should be encouraged. In order to acknowledge that some third countries may

Amendment

(22) The development of international convergence toward risk-based solvency regimes should be encouraged. In order to acknowledge that some third countries may

need more time to adapt and implement a solvency regime that would fully satisfy the criteria for being recognised as equivalent, it is necessary to *enable Commission measures adopted by means of delegated act to specify transitional arrangements* in relation to the treatment of such third country regimes, *particularly where a public commitment to converge to a regime equivalent to Directive 2009/138/EC has been made.*

need more time to adapt and implement a solvency regime that would fully satisfy the criteria for being recognised as equivalent, it is necessary to *specify conditions* in relation to the treatment of such third country regimes *in order for these third countries to be recognised temporarily* equivalent.

Or. en

Amendment 19

Proposal for a directive Recital 24

Text proposed by the Commission

(24) The amounts in euro of the Minimum Capital Requirement floor for *captive* reinsurance undertakings should be adapted. Such an adaptation arises out of the periodic adjustment of the existing capital requirement floors for such undertakings to take account of inflation.¹⁰

Amendment

(24) The amounts in euro of the Minimum Capital Requirement floor for *insurance and* reinsurance undertakings should be adapted. Such an adaptation arises out of the periodic adjustment of the existing capital requirement floors for such undertakings to take account of inflation.¹⁰

Or. en

Amendment 20

Proposal for a directive Recital 28

Text proposed by the Commission

(28) The European Parliament and the Council should have *two* months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by *one*

Amendment

(28) The European Parliament and the Council should have *three* months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by *three*

month with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.

months with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.

Or. en

Amendment 21

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

(29) In order to allow for a smooth transition under Directive 2009/138/EC to a new regime, it is necessary to provide for transitional ***requirements relating to governance requirements, valuation, supervisory reporting and public disclosure, the determination and classification of own funds, the standard formula for the calculation of the Solvency Capital Requirement (including any consequential changes in the area of capital add-ons) and the choice of methods and assumptions for the calculation of technical provisions. Where such changes are made at the level of the individual undertaking, corresponding and consequential changes should be made to the calculation of group solvency, and supervisory reporting and public disclosure at group level. Where such changes concern group supervisory reporting and group public disclosure, the appropriate transitional provisions should apply mutatis mutandis at group level. In relation to group solvency, Article 218(2) and (3) provide the basis for solvency***

Amendment

(29) In order to allow for a smooth transition under Directive 2009/138/EC to a new regime, it is necessary to provide for ***phasing in and specific transitional periods***.

requirements for supervision in cases of application of group supervision mentioned in Article 213. The methods and principles for calculating group solvency referred to in Article 218 are set out in more detail in Articles 220 to 235. Those methods and calculations apply (whether directly or by analogy) to cases of application of group supervision mentioned in Article 218. To the extent that such group solvency rules make reference to solvency rules at the level of the individual undertaking and where a transitional solvency regime is applied at individual level corresponding adaptations may need to be made to the group solvency rules.

Or. en

Amendment 22

Proposal for a directive – amending act Recital 30

Text proposed by the Commission

(30) The transitional **requirements** should aim at avoiding market disruption **and limiting interferences with existing products as well as ensuring the availability of insurance products. The provisions of transitional requirements should also allow proper consideration to be taken of the significant and valuable industry -wide information to be obtained from the quantitative impact study (QIS5). The transitional provisions set out in Directive 2009/138/EC should further specify non-essential elements to be determined by delegated acts. While the maximum periods for the transitional provisions are to be set out in Directive 2009/138/EC, the actual time period selected in any delegated act may be for a shorter period and should reflect the**

Amendment

(30) The transitional **periods** should aim at avoiding market disruption. The transitional **periods** should encourage undertakings to move towards compliance with the particular requirements of the new regime as soon as possible.

specific characteristics of the provisions and facilitate the application of the new regime. The transitional requirements should at least be equivalent, in effect, to the existing framework on insurance and reinsurance directives and should not result in more favourable treatment for insurance and reinsurance undertakings, or lower protection for policy holders, than currently exists. In terms of solvency requirements, this means that these should during any possible transitional period be no higher than the Solvency Capital Requirement and no lower than the sum of the Minimum Capital Requirement and fifty per cent of the difference between the Solvency Capital Requirement and the Minimum Capital Requirement. The transitional requirements should encourage undertakings to move towards compliance with the particular requirements of the new regime as soon as possible.

Or. en

Amendment 23

Proposal for a directive – amending act Recital 32

Text proposed by the Commission

(32) The Commission should, by 1 January 2014, report to the European Parliament and to the Council on the submission by the *ESA* of the draft technical standards provided for in this Directive and present any appropriate proposals.

Amendment

(32) The Commission should, by 1 January 2014, report to the European Parliament and to the Council on the submission by the *ESAs* of the draft technical standards provided for in this Directive and present any appropriate proposals.

Or. en

Amendment 24

Proposal for a directive – amending act Recital 33

Text proposed by the Commission

(33) Directives 2003/71/EC and 2009/138/EC should therefore be amended accordingly,

Amendment

(33) Directives **2002/92/EC, 2003/41/EC, 2003/71/EC and 2009/138/EC and Regulation (EC) No 1060/2009** should therefore be amended accordingly,

Or. en

Amendment 25

Proposal for a directive – amending act Article -1 – title and introductory part (new)

Text proposed by the Commission

Amendment

Article -1

Directive 2002/92/EC is amended as follows:

Or. en

Amendment 26

Proposal for a directive – amending act Article -1 – point 1 (new) Directive 2002/92/EC Article 3 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(1) In Article 3(2), the following subparagraph is added:

"Member States shall communicate the information gathered by the information point immediately to the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1093 of the European Parliament and

of the Council (EIOPA), which shall publish it on its website."*

¹ OJ

Or. en

Amendment 27

Proposal for a directive – amending act

Article -1 – point 2 (new)

Directive 2002/92/EC

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

(2) In Article 6, paragraph 2 is replaced by the following:

"2. Member States shall notify the Commission of their wish to be informed in accordance with paragraph 1. The Commission shall in turn notify all the Member States *and EIOPA* of this."

Or. en

Amendment 28

Proposal for a directive – amending act

Article -1 – point 3 (new)

Directive 2002/92/EC

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

(3) In Article 7, paragraph 1 is replaced by the following:

"1. Member States shall designate the competent authorities empowered to ensure implementation of this Directive. They shall inform the Commission *and EIOPA* thereof, indicating any division

of those duties."

Or. en

Amendment 29

Proposal for a directive – amending act

Article -1 – point 4 (new)

Directive 2002/92/EC

Article 9 – title

Text proposed by the Commission

Amendment

(4) In Article 9, the title is replaced by the following:

"Exchange of information between Member States and EIOPA"

Or. en

Amendment 30

Proposal for a directive – amending act

Article -1 – point 5 (new)

Directive 2002/92/EC

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(5) In Article 9, the following paragraph is inserted:

"1a. The competent authorities shall cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No 1094/2010. The competent authorities shall without delay provide EIOPA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation."

Or. en

Amendment 31

Proposal for a directive – amending act

Article -1 – point 6 (new)

Directive 2002/92/EC

Article 12 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

(6) In Article 12(5), subparagraph 2 is replaced by the following:

"Member States shall communicate to the Commission and EIOPA the national provisions set out in the first subparagraph.

Member States shall update that information on a regular basis and at least every two years and EIOPA shall make that information available on its website.

In order to ensure uniform conditions of application of this paragraph, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used by the competent authorities when transmitting and updating the relevant information to EIOPA.

EIOPA shall submit those draft implementing technical standards to the Commission by 1 June 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010."

Or. en

Amendment 32

Proposal for a directive – amending act

Article -1 a (new)

Directive 2003/41/EC

Article 17a – paragraph 5

Text proposed by the Commission

Amendment

Article -1a

Directive 2003/41/EC is amended as follows:

In Article 17a, paragraph 5 is replaced by the following:

"In order to ensure consistent harmonisation in relation to the available solvency margin , EIOPA may develop draft regulatory technical standards to take account of developments that justify a technical adjustment of the elements eligible for the available solvency margin.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010."

Or. en

Amendment 33

Proposal for a directive

Article 1 – point 1

Directive 2003/71/EC

Article 5 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

Where the final terms of the offer are neither included in the base prospectus, nor in a supplement, the final terms shall be made available to investors and filed with the competent authority of the home Member State, as well as communicated, by *the issuer, offeror or person asking for*

Where the final terms of the offer are neither included in the base prospectus, nor in a supplement, the final terms shall be made available to investors and filed with the competent authority of the home Member State, as well as communicated by *that competent authority* to the competent

the admission to trading on a regulated market, to the competent authority of the host Member State(s) and to the European Securities and Markets Authority (ESMA) when each public offer is made as soon as practicable and, where possible, in advance of the beginning of the public offer or admission to trading. The final terms shall only contain information that relates to the securities note and shall not be used to supplement the base prospectus. Article 8(1)(a) shall apply in such cases.

authority of the host Member State(s) and to the European Securities and Markets Authority (ESMA) when each public offer is made as soon as practicable and, where possible, in advance of the beginning of the public offer or admission to trading. The final terms shall only contain information that relates to the securities note and shall not be used to supplement the base prospectus. Article 8(1)(a) shall apply in such cases.

Or. en

Justification

Administrative burden for institutions should be limited to the strictly necessary.

Amendment 34

Proposal for a directive

Article 1 – point 2

Directive 2003/71/EC

Article 11 – paragraph 3

Text proposed by the Commission

*Powers are delegated to the Commission to **adopt** regulatory technical standards to specify the information to be incorporated by reference.*

Amendment

In order to ensure consistent harmonisation in relation to this Article, ESMA shall develop draft regulatory technical standards to specify the information to be incorporated by reference.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 35

Proposal for a directive

Article 1 – point 2

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Directive 2003/71/EC
Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The regulatory technical standards ***referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation .../... [ESMA].***

Amendment

ESMA shall submit those draft regulatory technical standards to the ***Commission by 1 January 2014.***

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 36

Proposal for a directive

Article 1 – point 2

Directive 2003/71/EC
Article 11 – paragraph 3 – subparagraph 3

Text proposed by the Commission

ESMA shall develop draft regulatory technical standards ***for submission*** to the ***Commission by 1 January 2014 at the latest.***

Amendment

Power is delegated to the Commission to adopt regulatory technical standards ***referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 37

Proposal for a directive

Article 1 – point 3

Directive 2003/71/EC
Article 13 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Amendment

Powers are delegated to the Commission to **adopt** regulatory technical standards to specify the procedures for the approval of the prospectus and the conditions in accordance with which time limits may be adjusted.

In order to ensure consistent harmonisation in relation to the approval of prospectus, ESMA shall develop draft regulatory technical standards to specify the procedures for the approval of the prospectus and the conditions in accordance with which time limits may be adjusted.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 38

Proposal for a directive

Article 1 – point 3

Directive 2003/71/EC

Article 13 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Amendment

The regulatory technical standards **referred to in the first subparagraph shall be adopted in accordance with Article 10 to 14 of Regulation .../... [ESMA].**

ESMA shall submit those draft regulatory technical standards to the **Commission by 1 January 2014.**

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 39

Proposal for a directive

Article 1 – point 3

Directive 2003/71/EC

Article 13 – paragraph 7 – subparagraph 3

Text proposed by the Commission

Amendment

ESMA shall develop draft regulatory technical standards **for submission** to the Commission **by 1 January 2014 at the latest**.

Power is delegated to the Commission to adopt the regulatory technical standards referred to **in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010**.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 40

Proposal for a directive

Article 1– point 4

Directive 2003/71/EC

Article 14 – paragraph 8 – subparagraph 1

Text proposed by the Commission

Amendment

Powers are delegated to the Commission to adopt regulatory technical standards specify the provisions relating to the publication of the prospectus in paragraphs 1 to 4.

In order to ensure consistent harmonisation in relation to this Article, ESMA shall develop draft regulatory technical standards **to** specify the provisions relating to the publication of the prospectus in paragraphs 1 to 4.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 41

Proposal for a directive

Article 1– point 4

Directive 2003/71/EC

Article 14 – paragraph 8 – subparagraph 2

Text proposed by the Commission

Amendment

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation .../... [ESMA].

ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 42

Proposal for a directive

Article 1 – point 4

Directive 2003/71/EC

Article 14 – paragraph 8 – subparagraph 3

Text proposed by the Commission

Amendment

ESMA shall develop draft regulatory technical standards for submission to the Commission by 1 January 2014 at the latest.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 43

Proposal for a directive

Article 1 – point 5

Directive 2003/71/EC

Article 15 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Amendment

Powers are delegated to the Commission

In order to ensure consistent

to specify the provisions concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and specify the provisions laid down in paragraph 4.

harmonisation in relation to this Article, ESMA shall develop draft regulatory technical standards to specify the provisions concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and specify the provisions laid down in paragraph 4.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 44

Proposal for a directive

Article 1 – point 5

Directive 2003/71/EC

Article 15 – paragraph 7 – subparagraph 2

Text proposed by the Commission

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation .../... [ESMA].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 45

Proposal for a directive

Article 1 – point 5

Directive 2003/71/EC

Article 15 – paragraph 7 – subparagraph 3

Text proposed by the Commission

Amendment

ESMA shall develop draft regulatory technical standards *for submission* to the Commission by 1 January 2014 at the latest.

Power is delegated to the Commission to *adopt the* regulatory technical standards referred to *in* the *first subparagraph* in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

Aligning text to agreed Omnibus I wording.

Amendment 46

Proposal for a directive

Article 2 – point 1

Directive 2009/138/EC

Article 17 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission may adopt delegated acts, in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c**, relating to the **extension of the** list of forms set out in Annex III.

3. The Commission may adopt delegated acts, in accordance with Article 301a relating to the list of forms set out in **points 1 to 27 of Parts A, B and C** of Annex III.

Or. en

Justification

Delegation should only be given to the Commission to amend the list of legal forms in individual Member States.

Amendment 47

Proposal for a directive – amending act

Article 2 – point 1 a (new)

Directive 2009/138/EC

Article 25 a (new)

Text proposed by the Commission

Amendment

(1a) The following Article is inserted:

"Article 25a

*Notification and publication of
authorisations*

*Every authorisation and withdrawal or
refusal of authorisation shall be notified to
EIOPA. The name of each insurance
undertaking or reinsurance undertaking
to which authorisation has been granted
shall be entered in a list. EIOPA shall
publish and keep up to date that list on its
website."*

Or. en

Justification

Consistency with Omnibus I, Article 9(3) and (4).

Amendment 48

Proposal for a directive – amending act

Article 2 – point 1 b (new)

Directive 2009/138/EC

Article 29 – paragraph 4

Text proposed by the Commission

Amendment

*(1b) In Article 29, paragraph 4 is replaced
by the following:*

**"4. The Commission shall ensure that
delegated acts, regulatory technical
standards and implementing technical
standards take into account the principle
of proportionality, thus ensuring the
proportionate application of this
Directive, in particular to small
insurance undertakings.**

*EIOPA shall ensure that draft regulatory
technical standards, submitted in
accordance with Article 10 to 14 of*

Regulation (EU) No 1094/2010, draft implementing technical standards, submitted in accordance with Article 15 of Regulation (EU) No 1094/2010 and guidelines and recommendations, adopted in accordance with Article 16 of Regulation (EU) No 1094/2010, take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular to small insurance undertakings."

Or. en

Amendment 49

Proposal for a directive
Article 2 – point 2 – point a
Directive 2009/138/EC
Article 31 – paragraph 4

Text proposed by the Commission

4. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, relating to paragraph 2 specifying the key aspects on which aggregate statistical data are to be disclosed, and the format, structure, contents list and publication date of the disclosures.

Amendment

4. In order to ensure uniform conditions of application of paragraph 2 of this Article, EIOPA shall develop draft implementing technical standards to specify the key aspects on which aggregate statistical data are to be disclosed, and to determine the format, structure, contents list and annual publication date of the disclosures provided for in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission by 1 July 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Justification

ITS is also used in Article 144 CRD for a similar provision.

Amendment 50

Proposal for a directive

Article 2 – point 2 – point b

Directive 2009/138/EC

Article 31 – paragraph 5

Text proposed by the Commission

Amendment

(b) The following paragraph 5 is added: deleted

"5. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of paragraph 2 as supplemented by the delegated acts referred to in paragraph 4 concerning the matters covered by those delegated acts, specifically with regard to the templates and structure of the disclosures.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

The European Insurance and Occupational Pensions Authority (EIOPA) shall develop draft implementing technical standards for submission to the Commission by 31 December 2011 at the latest."

Or. en

Justification

ITS is also used in Article 144 CRD for a similar provision.

Amendment 51

Proposal for a directive

Article 2 – point 3

Text proposed by the Commission

Where a ***request for cooperation in relation to an on-site verification*** in accordance with ***this Article has been rejected or has not been acted upon within a reasonable period of time***, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Amendment

Where a ***supervisory authority has informed the supervisory authorities of a host Member state that it intends to carry out on-site verifications*** in accordance with ***paragraph 1 and where that supervisory authority is practically prohibited to exercise its right to carry out those on-site verifications or where those supervisory authorities are practically prohibited to exercise their right to participate in accordance with paragraph 2***, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19, ***paragraphs 1 to 3 and 6***, of Regulation (EU) No 1094/2010 EIOPA. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Or. en

Justification

Article 33 does not provide for a request for cooperation. In addition, paragraphs 4 and 5 of Regulation (EU) No 1094/2010 do not apply, as no individual decision addressed to a financial institution may be adopted. Consistency with Omnibus I, Article 5(10)(c).

Amendment 52

Proposal for a directive – amending act

Article 2 – point 3 a (new)

Directive 2009/138/EC

Article 33 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) In Article 33, the following fourth paragraph is added:

In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site

verifications where they are carried out jointly by two or more supervisory authorities.

Or. en

Justification

Article 33 does not provide for a request for cooperation. In addition, paragraphs 4 and 5 of Regulation (EU) No 1094/2010 do not apply, as no individual decision addressed to a financial institution may be adopted. Consistency with Omnibus I, Article 5(10)(c).

Amendment 53

Proposal for a directive – amending act

Article 2 – point 4 – point -a (new)

Directive 2009/138/EC

Article 35 – paragraph 2 – point a – subpoint i

Text proposed by the Commission

Amendment

(-a) in paragraph 2, point (a)(i) is replaced by the following:

"(i) at predefined periods, whereby, for periods of less than 12 months, regular supervisory reporting is limited to information that changes significantly in the course of the year;"

Or. en

Justification

Small and medium sized undertakings should not be forced to introduce systems and structures only for quarterly reporting.

Amendment 54

Proposal for a directive – amending act

Article 2 – point 4 – point -a a (new)

Directive 2009/138/EC

Article 35 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(-aa) in paragraph 2, the following subparagraph is added:

"Member States shall not require insurance and reinsurance undertakings to submit to the supervisory authorities a full list of assets on an item-by-item basis."

Or. en

Justification

It would be inappropriate to require a regular item-by-item reporting from undertakings.

Amendment 55

Proposal for a directive

Article 2 – point 4 – point a

Directive 2009/138/EC

Article 35 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the information referred to in paragraphs 1 to 4, with a view to ensuring to the appropriate extent convergence of supervisory reporting.

6. In order to ensure consistent harmonisation in relation to this Article, EIOPA shall develop draft regulatory technical standards to specify the information and points in time referred to in paragraphs 1 to 4.

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 56

Proposal for a directive

Article 2 – point 4 – point b

Directive 2009/138/EC

Article 35 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of paragraphs 1 and 4 as supplemented by the delegated acts adopted under paragraph 6, specifically with regard to the templates and procedures for the submission of information to the supervisory authorities. The procedures may include, where appropriate, requirements for approval.

Amendment

7. In order to ensure uniform conditions of application of this Article, EIOPA may develop draft implementing technical standards to establish standard forms, templates and procedures for the submission of information to the supervisory authorities. The procedures may include, where appropriate, requirements for approval by the administrative, management or supervisory body of the insurance or reinsurance undertakings of the information submitted.

Or. en

Justification

Aligning text to agreed Omnibus I wording. It needs to be clarified who approves what.

Amendment 57

Proposal for a directive

Article 2 – point 4 – point b

Directive 2009/138/EC

Article 35 – paragraph 7 – subparagraph 2

Text proposed by the Commission

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

Amendment

EIOPA shall submit those draft implementing technical standards to the Commission by 1 July 2012.

Or. en

Justification

Aligning text to agreed Omnibus I wording. It needs to be clarified who approves what.

Amendment 58

Proposal for a directive

Article 2 – point 4 – point b

Directive 2009/138/EC

Article 35 – paragraph 7 – subparagraph 3

Text proposed by the Commission

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011 at the latest.

Amendment

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Justification

Aligning text to agreed Omnibus I wording. It needs to be clarified who approves what.

Amendment 59

Proposal for a directive

Article 2 – point 5 – point a

Directive 2009/138/EC

Article 37 – paragraph 6

Text proposed by the Commission

6. The Commission shall adopt delegated acts, in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c**, laying down further specifications for the circumstances under which a capital add-on may be imposed **and the methodologies for the calculation thereof and the process of decisions to set, calculate and remove capital add-ons.**

Amendment

6. The Commission shall adopt delegated acts, in accordance with Article 301a, laying down further specifications for the circumstances under which a capital add-on may be imposed.

Or. en

Amendment 60

Proposal for a directive

Article 2 – point 5 – point a a (new)

Directive 2009/138/EC

Article 37 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph is inserted:

"6a. In order to ensure consistent harmonisation in relation to capital add-ons, EIOPA shall develop draft regulatory technical standards to specify the methodologies for the calculation of capital add-ons.

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010."

Or. en

Justification

Methodologies for the calculation of capital add-ons clearly require supervisory expertise.

Amendment 61

Proposal for a directive

Article 2 – point 5 – point b

Directive 2009/138/EC

Article 37 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Amendment

7. Powers are conferred on the Commission to adopt implementing technical standards to determine the

7. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical

conditions of application of this Article *as supplemented by the delegated acts referred to in paragraph 6 concerning the matters covered by those delegated acts, specifically with regard to the process of* decisions to set, calculate and remove capital add-ons *referred to in the delegated acts adopted under paragraph 6.*

standards on the procedures to be followed for decisions to set, calculate and remove capital add-ons.

Or. en

Amendment 62

Proposal for a directive

Article 2 – point 5 – point b

Directive 2009/138/EC

Article 37 – paragraph 7 – subparagraph 2

Text proposed by the Commission

The implementing technical standards *referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].*

Amendment

EIOPA shall submit those draft implementing technical standards to the *Commission by 1 June 2012.*

Or. en

Amendment 63

Proposal for a directive

Article 2 – point 5 – point b

Directive 2009/138/EC

Article 37 – paragraph 7 – subparagraph 3

Text proposed by the Commission

EIOPA shall develop draft implementing technical standards *for submission* to the *Commission by 31 December 2011.*

Amendment

Power is conferred on the Commission to adopt the implementing technical standards *referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.*

Or. en

Amendment 64

Proposal for a directive

Article 2 – point 6

Directive 2009/138/EC

Article 38 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Where a *request for cooperation in relation to* an on-site inspection in accordance with *this paragraph has been rejected or has not been acted upon within a reasonable period of time*, the supervisory *authorities* may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Amendment

Where a *supervisory authority has informed the supervisory authorities of a host Member state that it intends to carry out* an on-site inspection in accordance with *the first subparagraph and where that supervisory authority is practically prohibited to exercise its right to carry out that on-site inspection*, the supervisory *authority* may refer the matter to EIOPA and request its assistance in accordance with Article 19, *paragraphs 1 to 3 and 6*, of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Or. en

Justification

Article 38 does not provide for a request for cooperation. In addition, paragraphs 4 and 5 of Regulation (EU) No 1094/2010 do not apply, as no individual decision addressed to a financial institution may be adopted. Consistency with Omnibus I, Article 5(10)(c).

Amendment 65

Proposal for a directive – amending act

Article 2 – point 6 a (new)

Directive 2009/138/EC

Article 38 – paragraph 2 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

(6a) In Article 38(2), the following subparagraph 1a is added:

"In accordance with Article 21 of

Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site inspections where they are carried out jointly by two or more supervisory authorities."

Or. en

Justification

Article 38 does not provide for a request for cooperation. In addition, paragraphs 4 and 5 of Regulation (EU) No 1094/2010 do not apply, as no individual decision addressed to a financial institution may be adopted. Consistency with Omnibus I, Article 5(10)(c).

Amendment 66

Proposal for a directive

Article 2 – point 7

Directive 2009/138/EC

Article 50 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Commission shall adopt delegated acts, in accordance with Article 301a ***and subject to the conditions of Articles 301b and 301c***, to further specify the following:

Amendment

1. The Commission shall adopt delegated acts, in accordance with Article 301a, to further specify the following:

Or. en

Amendment 67

Proposal for a directive

Article 2 – point 7

Directive 2009/138/EC

Article 50 – paragraph 2

Text proposed by the Commission

2. Where necessary to ensure appropriate convergence of the assessment referred to in point (a) of Article 45(1), the Commission may adopt delegated acts, in accordance with Article 301a ***and subject to the conditions of Articles 301b and***

Amendment

2. Where necessary to ensure appropriate convergence of the assessment referred to in point (a) of Article 45(1), the Commission may adopt delegated acts, in accordance with Article 301a, to further

301c, to further specify the elements of that assessment.

specify the elements of that assessment.

Or. en

Amendment 68

Proposal for a directive

Article 2 – point 10

Directive 2009/138/EC

Article 56 – paragraph 1

Text proposed by the Commission

The Commission shall adopt delegated acts, in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c**, further specifying the information which must be disclosed **and the means by which this is to be achieved**.

Amendment

The Commission shall adopt delegated acts, in accordance with Article 301a, further specifying the information which must be disclosed **in accordance with section 3**.

Or. en

Amendment 69

Proposal for a directive

Article 2 – point 10

Directive 2009/138/EC

Article 56 – paragraph 2

Text proposed by the Commission

Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 53, 54 and 55 as supplemented by the delegated acts referred to in this Article concerning the matters covered by those delegated acts, specifically with regard to the templates for the public disclosure.

Amendment

In order to ensure uniform conditions of application of this section, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used.

Or. en

Amendment 70

Proposal for a directive

Article 2 – point 10

Directive 2009/138/EC

Article 56 – paragraph 3

Text proposed by the Commission

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

Amendment

EIOPA shall submit those draft implementing technical standards to the Commission by 1 June 2012.

Or. en

Amendment 71

Proposal for a directive

Article 2 – point 10

Directive 2009/138/EC

Article 56 – paragraph 4

Text proposed by the Commission

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011 at the latest.

Amendment

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Amendment 72

Proposal for a directive

Article 2 – point 11

Directive 2009/138/EC

Article 58 – paragraph 8

Text proposed by the Commission

8. The Commission shall adopt delegated

Amendment

8. In order to ensure consistent

acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, further specifying the adjustments of the criteria set out in Article 59(1), in order to take account of future developments and to ensure the uniform application of Articles 57 to 63.

harmonisation in relation to this section, EIOPA may develop draft regulatory technical standards to establish an exhaustive list of information, referred to in Article 59(4), to be included by proposed acquirers in their notification, without prejudice to Article 58(2).

In order to ensure consistent harmonisation in relation to this section and to take account of future developments, EIOPA shall develop draft regulatory technical standards to specify the adjustments of the criteria set out in Article 59(1).

EIOPA shall submit the draft regulatory technical standards referred to in the second subparagraph to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

In order to ensure uniform conditions of application of this Directive, EIOPA may develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant supervisory authorities as referred to in Article 60.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fifth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Justification

Full alignment with CRD Articles 19, 19a and 19b, as amended by Omnibus I.

Amendment 73

Proposal for a directive – amending act

Article 2 – point 13 – point a

Directive 2009/138/EC

Article 71 – paragraph 2 – point b

Text proposed by the Commission

(b) the supervisory authorities follow the guidelines and recommendations of *the* EIOPA and *provide* reasons *where they fail to* do so;

Amendment

(b) the supervisory authorities follow the guidelines and recommendations of EIOPA and *state the* reasons *if they do not* do so;

Or. en

Justification

Full consistency with Omnibus I, Article 9(16) amending Article 42b CRD.

Amendment 74

Proposal for a directive

Article 2 – point 13 – point a

Directive 2009/138/EC

Article 71 – paragraph 2 – point c

Text proposed by the Commission

(c) national mandates conferred on the supervisory authorities do not inhibit the performance of their duties as members of *the* EIOPA under this Directive.

Amendment

(c) national mandates conferred on the supervisory authorities do not inhibit the performance of their duties as members of EIOPA *or* under this Directive.

Or. en

Justification

Full consistency with Omnibus I, Article 9(16) amending Article 42b CRD.

Amendment 75

Proposal for a directive

Article 2 – point 14 – point a

Text proposed by the Commission

2. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, to set out the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1.

Amendment

2. In order to ensure consistent harmonisation in relation to valuation of assets and liabilities, EIOPA shall develop draft regulatory technical standards to specify:

(a) methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1;

(b) international accounting standards as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 that are consistent with the valuation approach of assets and liabilities as laid down in paragraph 1;

(c) valuation approaches where quoted market prices are either not available or not consistent with the valuation approach of assets and liabilities as laid down in paragraph 1;

(d) alternative valuation methods to be used where international accounting standards, as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council*, are either temporarily or permanently not consistent with the valuation approach of assets and liabilities as laid down in paragraph 1.

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Justification

"Methods and assumptions" indicate involvement of supervisory expertise and should result in regulatory technical standards. Implementing technical standards as proposed by the Commission are also inappropriate.

Amendment 76

Proposal for a directive

Article 2 – point 14 – point b

Directive 2009/138/EC

Article 75 – paragraph 3

Text proposed by the Commission

Amendment

(b) The following paragraph 3 is added:

deleted

"3. Powers are conferred on the Commission to adopt implementing technical standards to:

(a) determine the conditions of application of paragraph 1 as supplemented by the delegated acts referred to in paragraph 2 in relation to the matters covered by those delegated acts, as regards:

(i) valuation approaches where quoted market prices are either not available or not consistent with paragraphs 1 and 2;

(ii) the consistency of international accounting standards as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 with the valuation approach set out in this Article;

(b) determine the conditions of application of paragraph 1 as supplemented by the delegated acts referred to in paragraph 2, in relation to the matters covered by those delegated acts, specifically with regard to the methods and assumptions to be used in

the valuation of assets and liabilities as laid down in paragraph 1 including alternative valuation methods to be used where international accounting standards, as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council¹, are either temporarily or permanently not consistent with the valuation approach set out in this Article.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011.

¹ OJ L 243, 11.9.2002, p. 1."

Or. en

Amendment 77

Proposal for a directive – amending act Article 2 – point 15

Directive 2009/138/EC
Article 77a

Text proposed by the Commission

*Technical information produced by the
European Insurance and Occupational
Pensions Authority*

EIOPA shall publish technical information including the relevant risk-free interest rate term structure. Where EIOPA observes an illiquidity premium in the financial markets in periods of stressed liquidity, information relating to the illiquidity premium, including its size shall also be published. EIOPA shall carry out the observation of the illiquidity

Amendment

Discount rates

1. The relevant risk-free interest rate term structure to be used to calculate the best estimate referred to in Article 77(2) shall be laid down and published by EIOPA for each relevant currency on at least a quarterly basis. Chapter VII of this Title shall apply based on this best estimate.

premium and the derivation of the information on a transparent, objective and reliable basis. Information for all these purposes shall be derived according to methods and assumptions which may include formulae, or determinations made by EIOPA.

The information referred to in the first paragraph shall be published for each relevant currency on at least a quarterly basis in a manner which is consistent with the methodologies referred to in Article 86.

2. Where EIOPA observes an illiquidity premium in the financial markets in periods of stressed liquidity, derived from the formula referred to in Article 86, and higher than X% points an adapted relevant risk-free interest rate term structure shall be published for each relevant currency in the same frequency as the relevant risk-free interest rate term structure referred to in paragraph 1. Supervisory authorities may allow insurance and reinsurance undertakings to use that adapted relevant risk-free interest rate term structure in calculating the best estimate only for certain substantially illiquid liabilities, identified in accordance with Article 86. In that event, insurance and reinsurance undertakings shall publicly disclose the use of this premium and the monetary effect on their financial position.

3. EIOPA shall carry out the tasks referred to in paragraphs 1 and 2 in a transparent, objective and reliable manner.

Or. en

Justification

An adaptation for the relevant risk-free interest rate term structure with an illiquidity premium should be made to cater for truly stressed market situation. EIOPA should develop a formula on which basis an illiquidity premium is derived, whereby avoiding that very small premiums have an effect on the interest rate structure. This provides more certainty and predictability in the market. Member States should be able not to allow this deviation for undertakings established in their jurisdiction.

Amendment 78

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – title

Text proposed by the Commission

Amendment

Delegated acts and implementing acts

Regulatory technical standards

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 79

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – introductory part

Text proposed by the Commission

Amendment

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the following:

In order to ensure consistent harmonisation in relation to the methods and calculations for technical provisions, EIOPA shall develop draft regulatory technical standards to specify:

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 80

Proposal for a directive – amending act

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 1 – point b

Text proposed by the Commission

(b) the methodologies, principles and techniques for the determination of the relevant risk-free interest rate structure to be used to calculate the best estimate referred to in Article 77(2);

Amendment

(b) the methodologies, principles and techniques for the determination of the relevant risk-free interest rate **term** structure to be used to calculate the best estimate referred to in Article 77(2);

Or. en

Amendment 81

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 1 – point c

Text proposed by the Commission

(c) the circumstances in which technical provisions shall be calculated as a whole, or as a sum of a best estimate and a risk margin, and the methods to be used in the case where technical provisions are calculated as a whole;

Amendment

(c) the circumstances in which technical provisions shall be calculated as a whole, or as a sum of a best estimate and a risk margin, and the methods to be used in the case where technical provisions are calculated as a whole **as referred to in Article 77(4)**;

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 82

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 1 – point d

Text proposed by the Commission

(d) the methods and assumptions to be used in the calculation of the risk margin including the determination of the amount of eligible own funds necessary to support the insurance and reinsurance obligations and the calibration of the Cost-of-Capital rate;

Amendment

(d) the methods and assumptions to be used in the calculation of the risk margin including the determination of the amount of eligible own funds necessary to support the insurance and reinsurance obligations and the calibration of the Cost-of-Capital rate *as referred to in Article 77(5)*;

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 83

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the detailed criteria for the methodology and the formula to calculate the illiquidity premium and the methodology to identify substantial illiquid liabilities, as referred to in Article 77a;

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and

should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 84

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 1 – point e

Text proposed by the Commission

(e) the lines of business on the basis of which insurance and reinsurance obligations are to be segmented in order to calculate technical provisions;

Amendment

(e) the lines of business on the basis of which insurance and reinsurance obligations are to be segmented in order to calculate technical provisions ***referred to in Article 80;***

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 85

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 paragraph 1 – point f

Text proposed by the Commission

(f) the standards to be met with respect to ensuring the appropriateness, completeness and accuracy of the data used in the calculation of technical provisions, and the specific circumstances in which it would be appropriate to use approximations, including case-by-case approaches, to calculate the best estimate;

Amendment

(f) the standards to be met with respect to ensuring the appropriateness, completeness and accuracy of the data used in the calculation of technical provisions, and the specific circumstances in which it would be appropriate to use approximations, including case-by-case approaches, to calculate the best estimate ***as referred to in Article 82;***

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 86

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 1 – point i

Text proposed by the Commission

Amendment

(i) the detailed criteria for the elements of technical information, the calculation methods and assumptions, and where appropriate the formulae and determinations, according to which the information is to be derived by EIOPA as referred to in Article 77a.. *deleted*

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 87

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 88**Proposal for a directive****Article 2 – point 16**

Directive 2009/138/EC

Article 86 – paragraph 2

Text proposed by the Commission

*Powers are conferred on the Commission to adopt **implementing** technical standards to **determine** the **conditions of application of Article 77(2) as supplemented by the delegated acts referred to in points (a) to (h) of the first paragraph of this Article, concerning the matters covered by those delegated acts.***

Amendment

***Power is delegated to** the Commission to adopt **the regulatory** technical standards referred to **in** the **first subparagraph** in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.*

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 89**Proposal for a directive****Article 2– point 16**

Directive 2009/138/EC

Article 86 – paragraph 3

Text proposed by the Commission

The implementing technical standards referred to in the first paragraph shall be

Amendment

deleted

adopted in accordance with Article 15 of Regulation .../... [EIOPA].

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 90

Proposal for a directive

Article 2 – point 16

Directive 2009/138/EC

Article 86 – paragraph 4

Text proposed by the Commission

Amendment

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

deleted

Or. en

Justification

Implementing measures on technical provisions clearly require supervisory expertise, and should therefore result in regulatory technical standards, which makes additional implementing technical standards superfluous with a view to "better regulation".

Amendment 91

Proposal for a directive

Article 2 – point 17 – point a

Directive 2009/138/EC

Article 92 – title

Text proposed by the Commission

Amendment

Delegated acts and implementing acts

Regulatory technical standards and implementing technical standards

Justification

Procedures are the subject of implementing technical standards. The subject of this paragraph requires supervisory expertise.

Amendment 92

Proposal for a directive

Article 2 – point 17 – point b

Directive 2009/138/EC

Article 92 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the following:

Amendment

1. In order to ensure consistent harmonisation in relation to determination of own funds, EIOPA shall develop draft regulatory technical standards to specify:

Justification

Procedures are the subject of implementing technical standards. The subject of this paragraph requires supervisory expertise.

Amendment 93

Proposal for a directive

Article 2 – point 17 – point b

Directive 2009/138/EC

Article 92 – paragraph 1 – point a

Text proposed by the Commission

(a) the criteria **and procedure** for granting supervisory approval of ancillary own funds in accordance with Article 90;

Amendment

(a) the criteria for granting supervisory approval of ancillary own funds in accordance with Article 90;

Justification

Procedures are the subject of implementing technical standards. The subject of this paragraph requires supervisory expertise.

Amendment 94

Proposal for a directive

Article 2 – point 17 – point b

Directive 2009/138/EC

Article 92 – paragraph 1 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Or. en

Justification

Procedures are the subject of implementing technical standards. The subject of this paragraph requires supervisory expertise.

Amendment 95

Proposal for a directive

Article 2 – point 17 – point b

Directive 2009/138/EC

Article 92 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Justification

Procedures are the subject of implementing technical standards. The subject of this paragraph requires supervisory expertise.

Amendment 96

Proposal for a directive

Article 2 – point 17 – point b a (new)

Directive 2009/138/EC

Article 92 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(ba) The following paragraph is added:

"2a. In order to ensure uniform conditions of application of Article 90, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used for granting supervisory approval to use ancillary own funds.

EIOPA shall submit those draft implementing technical standards to the Commission by 1 June 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010."

Or. en

Amendment 97

Proposal for a directive

Article 2 – point 17 – point c

Directive 2009/138/EC

Article 92 – paragraph 3

Text proposed by the Commission

Amendment

(c) Paragraph 3 is replaced by the following:

deleted

3. "Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of Article 90 as supplemented

by the delegated acts referred to in paragraph 1(a) of this Article concerning the matters covered by those delegated acts, specifically with regard to the procedure to be followed for granting supervisory approval of ancillary own funds.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

Or. en

Amendment 98

Proposal for a directive

Article 2 – point 18

Directive 2009/138/EC

Article 97 – title

Text proposed by the Commission

Amendment

Delegated acts and implementing acts

Regulatory technical standards

Or. en

Justification

The delegated acts require supervisory expertise.

Amendment 99

Proposal for a directive

Article 2 – point 18

Directive 2009/138/EC

Article 97 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

The Commission shall adopt delegated

In order to ensure consistent

acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the following:

harmonisation in relation to classification of own funds, EIOPA shall develop draft regulatory technical standards to specify:

Or. en

Justification

The delegated acts require supervisory expertise.

Amendment 100

Proposal for a directive

Article 2 – point 18

Directive 2009/138/EC

Article 97 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The Commission shall regularly review and, where appropriate update, the list referred to in point (a) of paragraph 1 in light of market developments.

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Or. en

Justification

The delegated acts require supervisory expertise.

Amendment 101

Proposal for a directive

Article 2 – point 18

Directive 2009/138/EC

Article 97 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Amendment

Justification

The delegated acts require supervisory expertise.

Amendment 102

Proposal for a directive

Article 2 – point 18

Directive 2009/138/EC

Article 97 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 93 to 96 as supplemented by the delegated acts referred to in paragraph 1 of this Article, concerning the matters covered by those delegated acts, specifically with regard to the classification methods.

Amendment

The Commission shall regularly review and, where appropriate update, the list referred to in point (a) of paragraph 1 in light of market developments.

Justification

There is no need to confer additional power on the Commission as it is included in the regulatory technical standards in the previous paragraph.

Amendment 103

Proposal for a directive

Article 2 – point 18

Directive 2009/138/EC

Article 97 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

Amendment

deleted

Justification

There is no need to confer additional power on the Commission as it is included in the regulatory technical standards in the previous paragraph.

Amendment 104

Proposal for a directive

Article 2 – point 18

Directive 2009/138/EC

Article 97 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011. ***deleted***

Justification

There is no need to confer additional power on the Commission as it is included in the regulatory technical standards in the previous paragraph.

Amendment 105

Proposal for a directive

Article 2 – point 19

Directive 2009/138/EC

Article 99 – title

Text proposed by the Commission

Amendment

Delegated acts and implementing acts ***Regulatory technical standards***

Justification

These delegated acts require supervisory expertise.

Amendment 106

Proposal for a directive

Article 2 – point 19

Directive 2009/138/EC

Article 99 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down:

Amendment

1. In order to ensure consistent harmonisation in relation to eligibility of own funds, EIOPA shall develop draft regulatory technical standards to specify:

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 107

Proposal for a directive

Article 2 – point 19

Directive 2009/138/EC

Article 99 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 108

Proposal for a directive

Article 2 – point 19

Directive 2009/138/EC

Article 99 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 109

Proposal for a directive

Article 2 – point 19

Directive 2009/138/EC

Article 99 – paragraph 2

Text proposed by the Commission

Amendment

2. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Article 98 as supplemented by the delegated acts referred to in paragraph 1 of this Article concerning the matters covered by those delegated acts, specifically with regard to adjustments in relation to ring-fenced funds.

deleted

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

Or. en

Justification

Overlap with the regulatory technical standards in paragraph 1.

Amendment 110

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – title

Text proposed by the Commission

Amendment

Harmonised technical inputs to standard formula: ***role of European Insurance and Occupational Pensions Authority***

Harmonised technical inputs to standard formula

Or. en

Amendment 111

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. For the purposes of evaluating risk mitigation techniques as referred to in Article 101(5) facilitating the calculation of the market risk module referred to in Article 105(5) and, where appropriate, facilitating the counterparty default risk module referred to in Article 105(6), EIOPA shall:

1. An external credit assessment may be used to determine the probability of default when calculating the counterparty default risk module referred to in Article 105(6), subject to the following conditions:

Or. en

Justification

Recognition of ECAIs needs to be aligned and consistent with CRD, including CRD 4, and the CRA Regulation. Overlap needs to be avoided and therefore a role for the Joint Committee is justified. EIOPA and EBA should make optimal use of ESMA's competences and experience.

Amendment 112

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 – point a

Text proposed by the Commission

(a) ***assess the eligibility of external credit assessment institutions and allocate their credit assessments to an objective scale of credit quality steps;***

Amendment

(a) external credit ***assessments are issued by an External Credit Assessment Institution (ECAI);***

Or. en

Justification

Recognition of ECAIs needs to be aligned and consistent with CRD, including CRD 4, and the CRA Regulation. Overlap needs to be avoided and therefore a role for the Joint Committee is justified. EIOPA and EBA should make optimal use of ESMA's competences and experience.

Amendment 113

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 – point b

Text proposed by the Commission

(b) ***publish lists of regional governments and local authorities, exposures to whom are to be treated as exposures to central government;***

Amendment

(b) ***ECAIs are all credit rating agencies that have been registered or certified in accordance with Regulation (EC) No 1060/2009;***

Or. en

Justification

Recognition of ECAIs needs to be aligned and consistent with CRD, including CRD 4, and the CRA Regulation. Overlap needs to be avoided and therefore a role for the Joint Committee is justified. EIOPA and EBA should make optimal use of ESMA's competences and experience.

Amendment 114

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 – point c

Text proposed by the Commission

(c) specify the equity index referred to in Article 106(2), calculate the symmetric adjustment referred to in Article 106 and publish both sets of information on a regular basis;

Amendment

(c) if an ECAI is not registered in accordance with Regulation (EC) No 1060/2009, its eligibility shall be assessed by the European Supervisory Authorities (ESAs), through the Joint Committee, and subject to the methodological requirements of Title II of Regulation (EC) No 1060/2009;

Or. en

Justification

Recognition of ECAIs needs to be aligned and consistent with CRD, including CRD 4, and the CRA Regulation. Overlap needs to be avoided and therefore a role for the Joint Committee is justified. EIOPA and EBA should make optimal use of ESMA's competences and experience.

Amendment 115

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 – point d

Text proposed by the Commission

(d) specify the adjustments to be made for currencies pegged to the euro in the currency risk sub-module referred to in Article 105(5).

Amendment

(d) the Joint Committee shall make publicly available a list of eligible ECAIs;

Or. en

Justification

Recognition of ECAIs needs to be aligned and consistent with CRD, including CRD 4, and the CRA Regulation. Overlap needs to be avoided and therefore a role for the Joint Committee is

justified. EIOPA and EBA should make optimal use of ESMA's competences and experience.

Amendment 116

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the Joint Committee shall verify that individual credit assessments are accessible at equivalent terms at least to all institutions having a legitimate interest in these individual credit assessments;

Or. en

Justification

Recognition of ECAIs needs to be aligned and consistent with CRD, including CRD 4, and the CRA Regulation. Overlap needs to be avoided and therefore a role for the Joint Committee is justified. EIOPA and EBA should make optimal use of ESMA's competences and experience.

Amendment 117

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) the external credit assessments are allocated to an objective scale of credit quality steps through the Joint Committee.

Or. en

Justification

Recognition of ECAIs needs to be aligned and consistent with CRD, including CRD 4, and the CRA Regulation. Overlap needs to be avoided and therefore a role for the Joint Committee is

justified. EIOPA and EBA should make optimal use of ESMA's competences and experience.

Amendment 118

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. EIOPA shall have the following tasks:

(a) for the purposes of facilitating the calculation of the market risk module referred to in Article 105(5):

(i) publish lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established, provided there is no difference in risk between such exposures because of specific revenue-raising powers of the former, and specific institutional arrangements exist, the effect of which is to reduce the risk of default;

(ii) specify the adjustments to be made for currencies pegged to the euro in the currency risk sub-module referred to in Article 105(5); and

(b) specify the appropriate equity index referred to in Article 106(2), calculate the symmetric adjustment referred to in Article 106 and publish both sets of information on a monthly basis."

Or. en

Amendment 119

Proposal for a directive

Article 2 – point 20

Directive 2009/138/EC

Article 109 a – paragraph 2

Text proposed by the Commission

2. For the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 105(4), EIOPA shall ***calculate and*** publish standard deviations in relation to specific national legislative measures of Member States which permit the sharing of claims ***payments*** in respect of health risk amongst insurance and reinsurance undertakings and which meet ***specified*** criteria.

Amendment

2. For the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 105(4), EIOPA shall publish, ***in accordance with the calculations provided by the supervisory authorities of the Member States concerned***, standard deviations in relation to specific national legislative measures of Member States which permit the sharing of claims in respect of health risk amongst insurance and reinsurance undertakings and which meet ***the following*** criteria:

(a) the mechanism for the sharing of claims is transparent and fully specified in advance of the annual period to which it applies;

(b) the mechanism for the sharing of claims, the number of insurance undertakings that participate in the Health Risk Equalisation System (HRES) and the risk characteristics of the business subject to the HRES ensure that for each undertaking participating in the HRES the volatility of annual losses of the business subject to the HRES is significantly reduced by means of the HRES, both in relation to premium and to reserve risk;

(c) the health insurance subject to the HRES is compulsory and serves as a partial or complete alternative to health cover provided by the statutory social security system;

(d) in case of default of insurance undertakings participating in the HRES, one or several governments guarantee to fully meet the policyholder claims of the insurance business that is subject to the HRES.

The Commission may adopt delegated acts, in accordance with Article 301a,

laying down additional criteria.

Or. en

Justification

"Which meet specified criteria" is too vague. Further specification of criteria is provided, possibly by a delegated act laying down additional requirements.

Amendment 120

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – title

Text proposed by the Commission

Amendment

Delegated acts and implementing acts

Regulatory technical standards

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 121

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, providing for the following:

1. In order to ensure consistent harmonisation in relation to Article 101 and Articles 103 to 109, EIOPA shall develop draft regulatory technical standards to specify:

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 122

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – point d

Text proposed by the Commission

(d) the correlation parameters, including, where necessary, those set out in Annex IV, **and the procedures for updating those parameters;**

Amendment

(d) the correlation parameters, including, where necessary, those set out in Annex IV;

Or. en

Justification

Procedures are the subject of implementing technical standards.

Amendment 123

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – point k

Text proposed by the Commission

(k) criteria in relation to the standardised methods to be used by the insurance or reinsurance undertaking to calculate the undertaking-specific parameters referred to in point (j), and any criteria with respect to the completeness, accuracy, and appropriateness of the data used that must be met before supervisory approval is given **together with the procedure to be followed for such approval;**

Amendment

(k) criteria in relation to the standardised methods to be used by the insurance or reinsurance undertaking to calculate the undertaking-specific parameters referred to in point (j), and any criteria with respect to the completeness, accuracy, and appropriateness of the data used that must be met before supervisory approval is given;

Or. en

Justification

Procedures are the subject of implementing technical standards.

Amendment 124

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – point n

Text proposed by the Commission

(n) the ***detailed criteria for the eligibility of external credit assessment institutions and for the association*** of credit assessments to a scale of credit quality referred to in ***Article 109a(1)(a)***;

Amendment

(n) the ***allocation*** of credit assessments to a scale of credit quality ***steps*** referred to in ***Article 109a(1)(f)***;

Or. en

Justification

Eligibility criteria are laid down in the CRA Regulation.

Amendment 125

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – point o

Text proposed by the Commission

(o) the detailed criteria for the equity index referred to in ***Article 109a(1)(c)***;

Amendment

(o) the detailed criteria for the equity index referred to in ***Article 109a(1a)(b)***;

Or. en

Amendment 126

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC
Article 111 – paragraph 1 – point p

Text proposed by the Commission

(p) the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module referred to in **Article 109a(1)(d)**;

Amendment

(p) the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module referred to in **Article 109a(1a)(a)(ii)**;

Or. en

Amendment 127

Proposal for a directive – amending act

Article 2 – point 21

Directive 2009/138/EC
Article 111 – paragraph 1 – point q

Text proposed by the Commission

(q) the detailed criteria that the national legislative measures arrangements shall meet, and the requirements for the calculation of the standard deviation for the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 109a(2)

Amendment

(q) the detailed criteria that the national legislative measures arrangements shall meet, and the **methodology and** requirements for the calculation of the standard deviation for the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 109a(2).

Or. en

Amendment 128

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC
Article 111 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Amendment 129

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 130

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – subparagraph 1 c (new)

Text proposed by the Commission

Amendment

In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used concerning:

(a) the updating of the correlation parameters referred to in point (d);

(b) the supervisory approval to use undertaking specific parameters referred to in point (k).

Or. en

Amendment 131

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – subparagraph 1 d (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft implementing technical standards to the Commission by 1 June 2012.

Or. en

Amendment 132

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 1 – subparagraph 1 e (new)

Text proposed by the Commission

Amendment

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Amendment 133

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down quantitative limits

2. In order to ensure consistent harmonisation in relation to solvency capital requirement, EIOPA shall develop draft regulatory technical standards,

and asset eligibility criteria. Those *delegated acts* shall apply to assets covering technical provisions, excluding assets held in respect of life insurance contracts where the investment risk is borne by the policy holders. Those *measures* shall be reviewed by the Commission in the light of developments in the standard formula and financial markets.

laying down quantitative limits and asset eligibility criteria *in order to address risks which are not adequately covered by a sub-module*.

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Those *regulatory technical standards* shall apply to assets covering technical provisions, excluding assets held in respect of life insurance contracts where the investment risk is borne by the policy holders. Those *regulatory technical standards* shall be reviewed by the Commission in the light of developments in the standard formula and financial markets.

Or. en

Justification

Consistency with the adopted Solvency II text.

Amendment 134

Proposal for a directive

Article 2 – point 21

Directive 2009/138/EC

Article 111 – paragraph 3

Text proposed by the Commission

Amendment

3. Powers are conferred on the

deleted

Commission to adopt implementing technical standards to determine:

(a) the conditions of application of Articles 101 to 110 as supplemented by the delegated acts referred to in paragraph 1(a) to (m), concerning the matters covered by those delegated acts; and

(b) the standardised methods to be used to calculate the undertaking specific parameters as referred to in paragraph 1(j).

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

Or. en

Justification

The objective of this paragraph can already be achieved by the regulatory technical standards in paragraph 1.

Amendment 135

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – title

Text proposed by the Commission

Amendment

Delegated acts and implementing acts

Regulatory technical standards and implementing technical standards

Or. en

Amendment 136

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – introductory part

Text proposed by the Commission

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, setting out the following:

Amendment

In order to ensure consistent harmonisation in relation to solvency capital requirement full and partial internal model, EIOPA shall develop draft regulatory technical standards to specify:

Or. en

Amendment 137

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – point a

Text proposed by the Commission

(a) the procedure to be followed for the approval of an internal model;

Amendment

deleted

Or. en

Justification

Procedures are the subject of implementing technical standards.

Amendment 138

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – point c

Text proposed by the Commission

(c) the procedures to approve major

Amendment

(c) the policy for changing an internal

changes to an internal model and changes to the policy for changing an internal model referred to in Article 115;

model referred to in Article 115;

Or. en

Justification

Procedures are the subject of implementing technical standards.

Amendment 139

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – point d

Text proposed by the Commission

(d) *approaches, including, where appropriate, default techniques* which *allow* a partial internal model *to* be fully integrated into the Solvency Capital Requirement standard formula and requirements for the use of alternative techniques.

Amendment

(d) *the way in* which a partial internal model *shall* be fully integrated into the Solvency Capital Requirement standard formula *referred to in Article 113(1)(c)* and requirements for the use of alternative *integration* techniques.

Or. en

Amendment 140

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Or. en

Amendment 141

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 142

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – subparagraph 1 c (new)

Text proposed by the Commission

Amendment

In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used concerning:

(a) the approval of an internal model in accordance with Article 112; and

(b) the approval of major changes to an internal model and changes to the policy for changing an internal model referred to in Article 115.

Or. en

Amendment 143

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – subparagraph 1 d (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft implementing technical standards to the Commission by 1 June 2012.

Or. en

Amendment 144

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – subparagraph 1 e (new)

Text proposed by the Commission

Amendment

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010."

Or. en

Amendment 145

Proposal for a directive

Article 2 – point 22

Directive 2009/138/EC

Article 114 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 112 to 126 as

deleted

supplemented by the delegated acts referred to in paragraph 1 of this Article, concerning the matters covered by those delegated acts, specifically with regard to the procedures, adaptations and alternative techniques referred to in that paragraph . The implementing technical standards referred to in the second subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA]. EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

Or. en

Amendment 146

Proposal for a directive – amending act

Article 2 – point 23

Directive 2009/138/EC

Article 127 – title

Text proposed by the Commission

Amendment

Delegated acts and implementing acts

Regulatory technical standards

Or. en

Amendment 147

Proposal for a directive

Article 2 – point 23

Directive 2009/138/EC

Article 127 – paragraph 1

Text proposed by the Commission

Amendment

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, with respect to Articles 120 to 126, regarding the use of internal models

In order to ensure consistent harmonisation in relation to Articles 120 to 126 and to enhance the better assessment of the risk profile and management of the business of insurance

throughout the Union.

and reinsurance undertakings, EIOPA shall develop draft regulatory technical standards to specify the use of internal models throughout the Union.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 148

Proposal for a directive

Article 2 – point 23

Directive 2009/138/EC

Article 127 – paragraph 2

Text proposed by the Commission

Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 120 to 126, as supplemented by the delegated acts referred to in the first paragraph, concerning the matters covered by those delegated acts.

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 149

Proposal for a directive

Article 2 – point 23

Directive 2009/138/EC

Article 127 – paragraph 3

Text proposed by the Commission

The implementing technical standards referred to in the second paragraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA]. EIOPA

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of

shall develop draft implementing technical standards for submission to the Commission by 31 December 2011.

Regulation (EU) No 1094/2010.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 150

Proposal for a directive – amending act

Article 2 – point 23 a (new)

Directive 2009/138/EC

Article 129 – paragraph 1 – point d – subpoint i

Text proposed by the Commission

Amendment

(23a) In Article 129(1)(d), point (i) is replaced by the following

"(i) EUR 2 300 000 for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the classes 10 to 15 listed in Part A of Annex 1 are covered, in which case it shall be no less than EUR 3 500 000."

Or. en

Justification

The amounts in points (i) and (ii) should also have been amended in line with Article 300 (OJ C 41 of 19.2.2009). Life insurance and Reinsurance should be the same.

Amendment 151

Proposal for a directive – amending act

Article 2 – point 23 b (new)

Directive 2009/138/EC

Article 129 – paragraph 1 – point d – subpoint ii

Text proposed by the Commission

Amendment

(23b) In Article 129(1)(d), point (ii) is replaced by the following:

"(ii) EUR 3 500 000 for life insurance undertakings, including captive insurance undertakings;"

Or. en

Justification

The amounts in points (i) and (ii) should also have been amended in line with Article 300 (OJ C 41 of 19.2.2009). Life insurance and Reinsurance should be the same.

Amendment 152

Proposal for a directive

Article 2 – point 24

Directive 2009/138/EC

Article 129 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(iii) ***EUR 3 200 000*** for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be not less than EUR 1 100 000,

(iii) ***EUR 3 500 000*** for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be not less than EUR 1 100 000,

Or. en

Justification

The amounts in points (i) and (ii) should also have been amended in line with Article 300 (OJ C 41 of 19.2.2009). Life insurance and Reinsurance should be the same.

Amendment 153

Proposal for a directive – amending act

Article 2 – point 27

Directive 2009/138/EC

Article 130 – title

Text proposed by the Commission

Amendment

Delegated acts

Regulatory technical standards

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 154

Proposal for a directive

Article 2 – point 27

Directive 2009/138/EC

Article 130 – paragraph 1

Text proposed by the Commission

Amendment

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the calculation of the Minimum Capital Requirement, referred to in Articles 128 and 129.

In order to ensure consistent harmonisation in relation to minimum capital requirements, EIOPA shall develop draft regulatory technical standards to specify the calculation of the Minimum Capital Requirement, referred to Articles 128 and 129.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 155

Proposal for a directive

Article 2 – point 27

Directive 2009/138/EC

Article 130 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the

Commission by 1 March 2012.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 156

Proposal for a directive

Article 2 – point 27

Directive 2009/138/EC

Article 130 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 157

Proposal for a directive – amending act

Article 2 – point 29

Directive 2009/138/EC

Article 135 – title

Text proposed by the Commission

Amendment

Delegated acts

Regulatory technical standards and implementing technical standards

Or. en

Amendment 158

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 135 – paragraph 1 – introductory part

Text proposed by the Commission

1. *The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying* qualitative requirements in the following areas:

Amendment

1. *In order to ensure consistent harmonisation in relation to Articles 132(2) and 132(4), EIOPA may develop draft regulatory technical standards to specify* qualitative requirements in the following areas:

Or. en

Amendment 159

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 135 – paragraph 1 – point a

Text proposed by the Commission

(a) the identification, measurement, monitoring, managing *and reporting* of risks arising from investments in relation to the first subparagraph of Article 132(2);

Amendment

(a) the identification, measurement, monitoring *and* managing of risks arising from investments in relation to the first subparagraph of Article 132(2);

Or. en

Justification

Reporting procedures are the subject of implementing technical standards.

Amendment 160

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 135 – paragraph 1 – point b

Text proposed by the Commission

(b) the identification, measurement monitoring, managing **and reporting** of specific risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 132(4).

Amendment

(b) the identification, measurement monitoring **and** managing of specific risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 132(4).

Or. en

Justification

Reporting procedures are the subject of implementing technical standards.

Amendment 161

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 135 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 162

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 135 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

In order to ensure uniform conditions of application of points (a) and (b) referred to in paragraph 1, EIOPA may develop draft implementing technical standards

*on the reporting procedures to be followed
and formats and templates to be used.*

Or. en

Amendment 163

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 135 – paragraph 1 – subparagraph 1 c (new)

Text proposed by the Commission

Amendment

*Power is conferred on the Commission to
adopt the implementing technical
standards referred to in the third
subparagraph in accordance with Article
15 of Regulation (EU) No 1094/2010.*

Or. en

Amendment 164

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 135 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The Commission shall adopt delegated acts, in accordance with Article 301a *and subject to the conditions of Articles 301b and 301c*, laying down:

2. The Commission shall adopt delegated acts, in accordance with Article 301a, laying down:

Or. en

Amendment 165

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC
Article 135 – paragraph 2 – point c

Text proposed by the Commission

(c) the ***consequences of breaching*** the requirements laid down under points (a) and (b) of this paragraph, ***including, where appropriate, and notwithstanding*** Article 101(3), ***measures which impose a proportionate additional capital charge.***

Amendment

(c) the ***specifications for the circumstances under which a capital add-on may be imposed when*** the requirements laid down under points (a) and (b) of this paragraph ***have been breached, without prejudice to*** Article 101(3).

Or. en

Justification

Alignment with Article 37.

Amendment 166

Proposal for a directive

Article 2 – point 29

Directive 2009/138/EC

Article 136 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In order to ensure consistent harmonisation in relation to this Article, EIOPA shall develop draft regulatory technical standards to specify the methodologies for the calculation of capital add-ons referred to in point (c) of paragraph 1.

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Justification

Alignment with Article 37.

Amendment 167

Proposal for a directive

Article 2 – point 30 – point a

Directive 2009/138/EC

Article 138 – paragraph 4 – subparagraph 1

Text proposed by the Commission

In the event of an exceptional fall in financial markets, as **determined** by EIOPA in accordance with this paragraph, the supervisory authority may extend the period set out in the second **sub-paragraph** of paragraph 3 by an appropriate period of time taking into account all relevant factors.

Amendment

In the event of an exceptional fall in financial markets, as **declared** by EIOPA, in accordance with this paragraph, **and in consultation with the European Systemic Risk Board established under Regulation (EU) No 1092/2010**, the supervisory authority may extend the period set out in the second **subparagraph** of paragraph 3 by an appropriate period of time taking into account all relevant factors.

Or. en

Amendment 168

Proposal for a directive

Article 2 – point 30 – point b

Directive 2009/138/EC

Article 138 – paragraph 4 – subparagraph 4

Text proposed by the Commission

(b) The following **fourth** and **fifth sub-paragraphs** are **added**:

Without prejudice to **the powers of the EIOPA under** Article 18 of Regulation .../..., for the purposes of this paragraph, EIOPA **shall**, following a request by the supervisory authority concerned, **address an individual decision to the requesting supervisory authority declaring the**

Amendment

(b) The following **second** and **third subparagraphs** are **inserted after the first subparagraph**:

Without prejudice to Article 18 of Regulation (EU) No 1094/2010, for the purposes of this paragraph, EIOPA **may**, following a request by the supervisory authority concerned **or on its own initiative, adopt a decision determining** the existence of an exceptional fall in financial

existence of an exceptional fall in financial markets. An exceptional fall in financial markets exists, where *one or more insurance or reinsurance undertakings are unable to meet one of the requirements set out in paragraph 3 of this Article within the time period defined therein as a consequence of a fall in financial markets which is unforeseen, sharp and steep, which is different from the downturns that occur as part of the economic cycle and which has already affected seriously and adversely the financial situation of one or more insurance and reinsurance undertakings collectively representing a substantial part of the insurance or reinsurance market in one or more Member States.*

markets. An exceptional fall in financial markets exists, where *there is* a fall in financial markets which is unforeseen, sharp and steep, *and* which is different from the downturns that occur as part of the economic cycle.

Or. en

Amendment 169

Proposal for a directive

Article 2 – point 30 – point b

Directive 2009/138/EC

Article 138 – paragraph 4 – subparagraph 5

Text proposed by the Commission

EIOPA shall at least once a month review whether the conditions referred to in the *fourth* subparagraph still apply as of the date of the review *and repeal that decision where one or more of the conditions referred to in the fourth subparagraph on which the decision was based is no longer fulfilled*. To this end EIOPA *shall address an individual decision to* the supervisory authority concerned *declaring that an* exceptional fall in financial markets has ceased to exist.

Amendment

EIOPA shall at least once a month review whether the conditions referred to in the *previous* subparagraph still apply as of the date of the review. To this end EIOPA *may, upon a request by* the supervisory authority concerned *or on its own initiative, adopt a decision determining* that *the* exceptional fall in financial markets has ceased to exist.

Or. en

Amendment 170

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC

Article 143 – title

Text proposed by the Commission

Delegated acts

Amendment

Regulatory technical standards

Or. en

Amendment 171

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC

Article 143 – paragraph 1

Text proposed by the Commission

1. *The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the procedures to be followed by EIOPA when determining the existence of an exceptional fall in the financial markets, and the factors to be taken into account for the purpose of the application of Article 138(4) including the maximum appropriate period of time, expressed in total number of months, which shall be the same for all insurance and reinsurance undertakings as referred to in the first subparagraph of Article 138(4).*

Amendment

1. *In order to ensure consistent harmonisation in relation to Article 138(4), EIOPA shall develop draft regulatory technical standards to specify the factors to be taken into account for the purpose of the application of Article 138(4) including the maximum period of time, expressed in total number of months, which shall be the same for all insurance and reinsurance undertakings as referred to in the first subparagraph of Article 138(4).*

Or. en

Amendment 172

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC
Article 143 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Or. en

Amendment 173

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC
Article 143 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 174

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC
Article 143 – paragraph 1 – subparagraph 1 c (new)

Text proposed by the Commission

Amendment

In order to ensure uniform conditions of application of Article 138(4), EIOPA shall develop draft implementing technical standards to specify the procedures to be followed by EIOPA when determining the existence of an exceptional fall in the financial markets in accordance with

Article 138(4).

Or. en

Amendment 175

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC

Article 143 – paragraph 1 – subparagraph 1 d (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft implementing technical standards to the Commission by 1 June 2012.

Or. en

Amendment 176

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC

Article 143 – paragraph 1 – subparagraph 1 e (new)

Text proposed by the Commission

Amendment

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Amendment 177

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC

Article 143 – paragraph 2

Text proposed by the Commission

2. Where it is necessary to enhance convergence, the Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down further specifications with respect to the recovery plan referred to in Article 138(2), the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects."

Amendment

2. In order to ensure consistent harmonisation in relation to Articles 138(2), 139(2) and 141, EIOPA may develop draft regulatory technical standards to specify the recovery plan referred to in Article 138(2) and the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects.

Or. en

Amendment 178

Proposal for a directive

Article 2 – point 31

Directive 2009/138/EC

Article 143 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 179

Proposal for a directive – amending act

Article 2 – point 31 a (new)

Directive 2009/138/EC

Article 149 – paragraph 1

Text proposed by the Commission

Amendment

(31a) Article 149(1) is replaced by the

following:

"Any change which an insurance undertaking intends to make to the information referred to in Article 147 shall be subject to the procedure provided for in Articles 147 and 148."

Or. en

Justification

Reference should have been made to Article 147 instead of Article 145.

Amendment 180

Proposal for a directive – amending act

Article 2 – point 32

Directive 2009/138/EC

Article 155 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In addition, the supervisory authority of the **host** Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of **Regulation .../2010 [EIOPA]**. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Amendment

In addition, the supervisory authority of the **home** Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19, **paragraphs 1 to 4 and 6**, of **Regulation (EU) No 1094/2010**. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Or. en

Justification

The host Member State has all possible intervention powers at its disposal, as laid down in paragraph 3. The home Member State, however, could disagree with the assessment and intervention of the host Member State, and therefore should have the possibility to refer the matter to EIOPA.

Amendment 181

Proposal for a directive – amending act

Article 2 – point 32 a (new)

Directive 2009/138/EC

Article 155 – paragraph 9

Text proposed by the Commission

Amendment

(32a) In Article 155, paragraph 9 is replaced by the following:

"9. Member States shall inform the Commission and EIOPA of the number and types of cases which led to refusals under Articles 146 and 148 or in which measures have been taken under paragraphs 3 and 4 of this Article."

Or. en

Justification

Consistency with Omnibus I, Article 9(11).

Amendment 182

Proposal for a directive – amending act

Article 2 – point 33

Directive 2009/138/EC

Article 158 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In addition, the supervisory authority of the **host** Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of **Regulation .../2010 [EIOPA]**. In that case, EIOPA may act in accordance with the powers conferred on it by that *article*.

In addition, the supervisory authority of the **home** Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19, **paragraphs 1 to 4 and 6**, of **Regulation (EU) No 1094/2010**. In that case, EIOPA may act in accordance with the powers conferred on it by that *Article*.

Or. en

Amendment 183

Proposal for a directive – amending act

Article 2 – point 35 – point a

Directive 2009/138/EC

Article 172 – paragraph 1

Text proposed by the Commission

1. The Commission shall adopt delegated acts, in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c**, specifying the criteria to assess whether the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in Title I.

Amendment

1. The Commission shall adopt delegated acts, in accordance with Article 301a specifying the criteria to assess whether the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in Title I.

Or. en

Justification

The regulatory procedure needs to be Lisbonised. For reasons of transparency, the third countries that are equivalent need to be made public.

Amendment 184

Proposal for a directive – amending act

Article 2 – point 35 – point a a (new)

Directive 2009/138/EC

Article 172 – paragraph 2

Text proposed by the Commission

Amendment

(aa) paragraph 2 is replaced by the following:

"If the criteria adopted in accordance with paragraph 1 have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, decide that the solvency regime of that third country applied to reinsurance activities of undertakings

with the head office in that third country is equivalent to that laid down in Title I.

Those decisions shall be regularly reviewed to take into account any changes to the solvency regime laid down in Title I, and to the solvency regime in the third country.

EIOPA shall publish and keep up-to-date on its website a list of all third countries referred to in the first subparagraph."

Or. en

Justification

The regulatory procedure needs to be Lisbonised. For reasons of transparency, the third countries that are equivalent need to be made public.

Amendment 185

Proposal for a directive – amending act

Article 2 – point 35 – point b

Directive 2009/138/EC

Article 172 – paragraph 4

Text proposed by the Commission

4. By way of derogation from paragraph 3 and the second subparagraph of Article 134(1), the same treatment as in Article 172(3) and the second subparagraph of Article 134(1) shall be accorded, for a transitional period, to reinsurance contracts concluded with undertakings having their head office in a third country the solvency regimes of which are unlikely, by 31 December 2012, to fully meet the criteria for assessing equivalence, referred to in paragraph 1. The transitional period shall last for a maximum of 5 years from the date referred to in the first sub-paragraph of Article 309(1). This derogation shall only apply where the Commission has made a decision in accordance with paragraph 6

Amendment

4. Notwithstanding paragraph 1, the Commission may, in accordance with Article 301a and for a limited period, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, decide that the solvency regime of a third country applied to reinsurance activities of undertakings with the head office in that third country is temporarily equivalent to that laid down in Title I, if at least the following conditions have been met by that third country:

that specified conditions have been met by the third country.

(a) the third country has given written commitments to the European Union to adopt and apply a solvency regime that is capable of being assessed equivalent in accordance with paragraph 2, before the end of this period;

(b) the third country has established a convergence programme to fulfil this commitment;

(c) sufficient resources have been allocated to fulfil this commitment;

(d) the present third country's solvency regime is risk-based and based on market valuation of assets and liabilities;

(e) agreements have been concluded to exchange confidential supervisory information, in accordance with Article 264;

(f) the third country is assessed to comply with the core principles, principles and standards adopted by the International Association of Insurance Supervisors (IAIS).

Any decisions on temporary equivalence shall take into account the reports by the Commission in accordance with Article 177. Those decisions shall be regularly reviewed, on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission and EIOPA every six months.

EIOPA shall publish and keep up-to-date on its website a list of all third countries referred to in the first subparagraph.

The Commission may adopt delegated acts, in accordance with Article 301a, further specifying the conditions laid down in the first subparagraph.

Or. en

Amendment 186

Proposal for a directive – amending act

Article 2 – point 35 – point b

Directive 2009/138/EC

Article 172 – paragraph 5

Text proposed by the Commission

5. The *Commission may adopt delegated acts*, in accordance with *Article 301a and subject to the conditions of Articles 301b and 301c, specifying in relation to paragraph 4 the length of the transitional period which may be shorter than the maximum of 5 years and the conditions which are to be met by the third country. Those conditions shall cover commitments given by the supervisory authorities, their convergence to an equivalent regime over a set period of time, the existing or intended content of the regime, and matters of cooperation, exchange of information and professional secrecy obligations.*

Amendment

5. The *period referred to in paragraph 4 shall be five years from the date referred to in Article 310 or until the date on which, in accordance with paragraph 2, the solvency regime of that third country has been deemed to be equivalent to that laid down in Title I, whichever is the earliest.*

Or. en

Amendment 187

Proposal for a directive – amending act

Article 2 – point 35 – point b

Directive 2009/138/EC

Article 172 – paragraph 6

Text proposed by the Commission

6. *The Commission may, in accordance with the regulatory procedure referred to in Article 301(2), decide in respect of solvency regimes referred to in paragraph 4 that the conditions set out in Article 174(4) and the delegated act have been met by the third country.*

Amendment

6. *Reinsurance contracts concluded with undertakings having their head office in a third country temporarily equivalent in accordance with paragraph 4 shall be accorded the same treatment as in paragraph 3. Article 173 shall also apply to reinsurance undertakings having their*

head office in a third country temporarily equivalent in accordance with paragraph 4.

Those decisions shall be regularly reviewed.

Or. en

Amendment 188

Proposal for a directive – amending act

Article 2 – point 35 a (new)

Directive 2009/138/EC

Article 176

Text proposed by the Commission

Amendment

(35a) Article 176 is replaced by the following:

“Information from Member States to the Commission and EIOPA

The supervisory authorities of the Member States shall inform the Commission, EIOPA and the supervisory authorities of the other Member States of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the laws of a third country.

That information shall also contain an indication of the structure of the group concerned.

Where an undertaking governed by the law of a third country acquires a holding in an insurance or reinsurance undertaking authorised in the Community which would turn that insurance or reinsurance undertaking into a subsidiary of that third country undertaking, the supervisory authorities of the home Member State shall inform the Commission, EIOPA and the supervisory authorities of the other

Member States.”

Or. en

Amendment 189

Proposal for a directive – amending act

Article 2 – point 35 b (new)

Directive 2009/138/EC

Article 177 – paragraph 1

Text proposed by the Commission

Amendment

(35b) Article 177(1) is replaced by the following:

"1. Member States shall inform the Commission and EIOPA of any general difficulties encountered by their insurance or reinsurance undertakings in establishing themselves and operating in a third country or pursuing activities in a third country."

Or. en

Amendment 190

Proposal for a directive – amending act

Article 2 – point 36

Directive 2009/138/EC

Article 210 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the provisions of paragraph 1 with respect to the monitoring, management and control of risks arising from finite reinsurance activities.

2. In order to ensure consistent harmonisation in relation to finite reinsurance, EIOPA may develop draft regulatory technical standards to specify the monitoring, management and control of risks arising from finite reinsurance activities.

Power is delegated to the Commission to

adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

In order to ensure uniform conditions of application of paragraph 1, EIOPA may develop draft implementing technical standards on the reporting procedures to be followed and formats and templates to be used.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Justification

The delegated acts require supervisory expertise. Implementing technical standard added to clarify reporting procedures, if necessary.

Amendment 191

Proposal for a directive – amending act

Article 2 – point 37 – point a

Directive 2009/138/EC

Article 211 – paragraph 2 – introductory part

Text proposed by the Commission

2. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the following:

Amendment

2. In order to ensure consistent harmonisation in relation to Article 211(1), EIOPA shall develop draft regulatory technical standards to specify the following criteria for supervisory approval:

Or. en

Justification

The delegated acts require supervisory expertise.

Amendment 192

Proposal for a directive – amending act

Article 2 – point 37 – point a

Directive 2009/138/EC

Article 211 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Or. en

Justification

The delegated acts require supervisory expertise.

Amendment 193

Proposal for a directive – amending act

Article 2 – point 37 – point a

Directive 2009/138/EC

Article 211 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Justification

The delegated acts require supervisory expertise.

Amendment 194

Proposal for a directive – amending act

Article 2 – point 37 – point a

Directive 2009/138/EC

Article 211 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the procedures for supervisory approval of special purpose vehicles and, where the special purpose vehicle which assumes risk from an insurance or reinsurance undertaking is established in a Member State which is not the Member State in which the insurance or reinsurance undertaking is authorised, the procedures for cooperation and exchange of information between supervisory authorities.

deleted

Or. en

Amendment 195

Proposal for a directive – amending act

Article 2 – point 37 – point a

Directive 2009/138/EC

Article 211 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In order to ensure uniform conditions of application of Article 211 (1) and (2), EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used for granting supervisory approval to establish special purpose vehicles.

EIOPA shall submit those draft implementing technical standards to the Commission by 1 June 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

In order to ensure uniform conditions of application of Article 211 (1) and (2), EIOPA may develop draft implementing technical standards on the procedures to be followed and formats and templates to be used for the cooperation and exchange of information between supervisory authorities, where the special purpose vehicle which assumes risk from an insurance or reinsurance undertaking is established in a Member State which is not the Member State in which the insurance or reinsurance undertaking is authorised.

Or. en

Justification

Procedures are subject to implementing technical standards. The objective of paragraph 4 is included in the new paragraph 2a, which logically should be placed before paragraph 3.

Amendment 196

Proposal for a directive – amending act

Article 2 – point 37 – point a

Directive 2009/138/EC

Article 211 – paragraph 3

Text proposed by the Commission

3. Special purpose vehicles authorised prior to 31 December 2012 shall be subject to the law of the Member State that authorised the special purpose vehicle. However, any new activity commenced by such a special purpose vehicle after that date shall be subject to *paragraphs 1 and 2.*"

Amendment

3. Special purpose vehicles authorised prior to 31 December 2012 shall be subject to the law of the Member State that authorised the special purpose vehicle. However, any new activity commenced by such a special purpose vehicle after that date shall be subject to *paragraphs 1, 2 and 2a.*

Or. en

Justification

Procedures are subject to implementing technical standards. The objective of paragraph 4 is included in the new paragraph 2a, which logically should be placed before paragraph 3.

Amendment 197

Proposal for a directive – amending act

Article 2 – point 37 – point b

Directive 2009/138/EC

Article 211 – paragraph 4

Text proposed by the Commission

Amendment

(b) The following paragraph 4 is added: **deleted**

"4. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of this Article as supplemented by the delegated acts referred to in paragraph 2 concerning the matters covered by those delegated acts, specifically with regard to the procedure to be followed for granting supervisory approval of special purpose vehicles and the procedures for cooperation and exchange of information between supervisory authorities.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

Or. en

Justification

Procedures are subject to implementing technical standards. The objective of paragraph 4 is included in the new paragraph 2a, which logically should be placed before paragraph 3.

Amendment 198

Proposal for a directive – amending act

Article 2 – point 37 a (new)

Directive 2009/138/EC

Article 212 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(37a) In Article 212(1), point (e) is replaced by following:

“(e) ‘college of supervisors’ means permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group, the members of which are:

– the group supervisor;

– supervisory authorities supervising undertakings of the group, not being the group supervisor; and,

- EIOPA, which for the purpose of this definition shall be considered a supervisory authority.”

Or. en

Justification

Article 21(2) of the EIOPA regulation defines EIOPA as a supervisory authority for the purposes of colleges, in which it takes a leading role in ensuring a consistent and coherent functioning of the college.

Amendment 199

Proposal for a directive – amending act

Article 2 – point 37 b (new)

Directive 2009/138/EC

Article 216 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(37b) In Article 216(1), the second subparagraph is replaced by the

following:

"In such a case, the supervisory authority shall explain its decision to both the group supervisor and the ultimate parent undertaking at *Union* level. *The group supervisor shall notify the college of supervisors in accordance with Article 248(1)(a).*"

Or. en

Amendment 200

Proposal for a directive – amending act

Article 2 – point 37 b (new)

Directive 2009/138/EC

Article 216 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

(b) In Article 216(4), the third subparagraph is replaced by the following:

"The supervisory authority shall explain such decisions to both the undertaking and the group supervisor. *The group supervisor shall notify the college of supervisors in accordance with Article 248(1)(a).*"

Or. en

Amendment 201

Proposal for a directive – amending act

Article 2 – point 38

Directive 2009/138/EC

Article 216 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission may adopt delegated acts, in accordance with Article 301a ***and***

7. The Commission may adopt delegated acts, in accordance with Article 301a

subject to the conditions of Articles 301b and 301c, specifying the circumstances under which the decision referred to in paragraph 1 can be made.

specifying the circumstances under which the decision referred to in paragraph 1 can be made.

Or. en

Amendment 202

Proposal for a directive – amending act

Article 2 – point 38 a (new)

Directive 2009/138/EC

Article 217 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(38a) Article 217(1), the following subparagraph is added:

"In such a case, the supervisory authorities shall explain their agreement to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall notify the college of supervisors in accordance with Article 248(1)(a)."

Or. en

Amendment 203

Proposal for a directive – amending act

Article 2 – point 39

Directive 2009/138/EC

Article 217 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission may adopt delegated acts, in accordance with Article 301a ***and subject to the conditions of Articles 301b and 301c***, specifying the circumstances under which the decision referred to in paragraph 1 can be made.

3. The Commission may adopt delegated acts, in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 can be made.

Amendment 204

Proposal for a directive – amending act

Article 2 – point 40

Directive 2009/138/EC

Article 227 – paragraph 2

Text proposed by the Commission

(40) ***In*** Article 227(2), ***the second subparagraph*** is replaced by the following:

In so doing, the group supervisor shall consult the other supervisory authorities concerned ***and EIOPA*** before taking a decision on equivalence."

Amendment

(40) Article 227(2) is replaced by the following:

"The verification of whether the third-country regime is at least equivalent shall be carried out by the group supervisor at the request of the participating undertaking or on its own initiative. *The group supervisor shall cooperate with EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010.*

In so doing, the group supervisor shall, ***assisted by EIOPA***, consult the other supervisory authorities concerned before taking a decision on equivalence. ***This decision shall be taken in accordance with the criteria adopted in accordance with paragraph 3. The group supervisor shall not take any decision in relation to a third-country that is contradicting any decision taken vis-à-vis that third-country previously.***

Where supervisory authorities disagree with the decision taken in accordance with subparagraph 2, they may refer the matter to EIOPA and request its assistance in accordance with Article 19, paragraphs 1 to 3 and 6, of Regulation (EU) No 1094/2010 within 3 months after notification of the decision by the group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article."

Justification

It is important that no contradicting decisions are adopted by Member States. EIOPA's role is defined in accordance with Article 33(2) EIOPA Regulation. Mediation by EIOPA in case of different opinions should be introduced.

Amendment 205

Proposal for a directive – amending act

Article 2 – point 41

Directive 2009/138/EC

Article 227 – paragraph 3

Text proposed by the Commission

3. The Commission may adopt delegated acts, in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c**, specifying the criteria to assess whether the **solvency** regime **in** a third country is equivalent to that laid down in Title I, Chapter VI.

Amendment

3. The Commission may adopt delegated acts, in accordance with Article 301a specifying the criteria to assess whether the **supervisory** regime **of** a third country is equivalent to that laid down in Title I, Chapter VI.

Amendment 206

Proposal for a directive – amending act

Article 2 – point 41

Directive 2009/138/EC

Article 227 – paragraph 4

Text proposed by the Commission

Amendment

4. If the criteria adopted in accordance with the first subparagraph have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, decide

that the supervisory regime of that third country is equivalent to that laid down in Title I, Chapter VI.

Those decisions shall be regularly reviewed to take into account any changes to the *supervisory* regime laid down in Title I, Chapter VI, and to the *supervisory* regime in the third country.

EIOPA shall publish and keep up-to-date on its website a list of all third countries referred to in this Article.

Or. en

Justification

The regulatory procedure needs to be Lisbonised. For reasons of transparency, the third countries that are equivalent need to be made public.

Amendment 207

Proposal for a directive – amending act

Article 2 – point 41

Directive 2009/138/EC

Article 227 – paragraph 5

Text proposed by the Commission

Amendment

5. Where in accordance with paragraph 4 or paragraph 6 the Commission adopts a decision on equivalence or temporarily equivalence of the *supervisory* regime in a third country, paragraph 2 shall not apply.

Where a decision adopted by the Commission in accordance with paragraph 4 or 6 concludes that the *supervisory* regime is neither equivalent nor temporarily equivalent, the option referred to in the second subparagraph of paragraph 1 to take into account the Solvency Capital Requirement and eligible own funds as laid down by the third country concerned shall not be applicable and the third-country

insurance or reinsurance undertaking shall be treated exclusively in accordance with the first subparagraph of paragraph 1.

Or. en

Amendment 208

Proposal for a directive – amending act

Article 2 – point 42

Directive 2009/138/EC

Article 227 – paragraph 6

Text proposed by the Commission

6. By way of derogation from the second subparagraph of paragraph 1, Member States may for a transitional period provide that the group solvency calculation take into account, as regards the undertaking referred to in that subparagraph, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned. The transitional period shall last for a maximum of 5 years from the date referred to in the first sub-paragraph of Article 309(1). This derogation shall only apply where the Commission has made a decision in accordance with paragraph 7 that specified conditions have been met by the third country.

Amendment

6. Notwithstanding paragraph (5)2, the Commission may, in accordance with Article 301a and for a limited period, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, decide that the supervisory regime of a third country applied to undertakings with the head office in that third country is temporarily equivalent to that laid down in Title I, Chapter IV, if at least the following conditions have been met by that third country:

(a) the third country has given written commitments to the European Union to adopt and apply a supervisory regime that is capable of being assessed equivalent in accordance with paragraph 2, before the end of this period;

(b) the third country has established a convergence programme to fulfil this commitment;

(c) sufficient resources have been

allocated to fulfil this commitment;

(d) the present third country's supervisory regime is risk-based and based on market valuation of assets and liabilities;

(e) agreements have been concluded to exchange confidential supervisory information, in accordance with Article 264;

(f) the third country is assessed to comply with the core principles, principles and standards adopted by the International Association of Insurance Supervisors (IAIS).

Any decisions on temporary equivalence shall take into account the reports by the Commission in accordance with Article 177. Those decisions shall be regularly reviewed, on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission and EIOPA semi-annually.

EIOPA shall publish and keep up-to-date on its website a list of all third countries referred to in this Article.

The Commission may adopt delegated acts, in accordance with Article 301a, further specifying the conditions laid down in the first subparagraph.

Or. en

Amendment 209

Proposal for a directive – amending act

Article 2 – point 42

Directive 2009/138/EC

Article 227 – paragraph 7

Text proposed by the Commission

7. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b

Amendment

7. The period referred to in paragraph 6 shall be five years from the date referred to in Article 310 or until the date on

and 301c, specifying in relation to paragraph 6 the length of the transitional period which may be shorter than the maximum of 5 years and the conditions which are to be met by the third country. Those conditions shall cover commitments given by the supervisory authorities, their convergence to an equivalent regime over a set period of time, the existing or intended content of the regime, and matters of cooperation, exchange of information and professional secrecy obligations.

which, in accordance with paragraph 4, the solvency regime of that third country has been deemed to be equivalent to that laid down in Title I, Chapter VI, whichever is the earliest.

Or. en

Amendment 210

Proposal for a directive – amending act

Article 2 – point 42

Directive 2009/138/EC

Article 227 – paragraph 8

Text proposed by the Commission

8. The Commission may adopt a decision in respect of solvency regimes of third countries, referred to in paragraph 6 that the conditions set out in paragraph 4 and the delegated act have been met by the third country.

Those decisions shall be adopted after consultation with the European Insurance and Occupational Pensions Committee and in accordance with the regulatory procedure referred to in Article 301(2). The decisions shall be reviewed regularly.

Amendment

8. Where a decision in accordance with paragraph 6 is taken that the supervisory regime of a third country is temporarily equivalent, that third country shall be deemed to be equivalent of the purpose of paragraph 1(2).

Or. en

Amendment 211

Proposal for a directive – amending act

Article 2 – point 42 a (new)

Directive 2009/138/EC

Article 231 – paragraph 1

Text proposed by the Commission

Amendment

(42a) Article 231(1) 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 to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

An application as referred to in the first subparagraph shall be submitted to the group supervisor.

The group supervisor shall inform *and forward the complete application to the other members of the college of supervisors* [...] without delay."

Or. en

Justification

Deletion covered by the 3rd subparagraph of paragraph 1.

Amendment 212

Proposal for a directive – amending act

Article 2 – point 42 b (new)

Directive 2009/138/EC

Article 231 – paragraph 2

Text proposed by the Commission

Amendment

(42b) Article 231(2) is replaced by the following:

"2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor. "

Or. en

Justification

Deletion covered by the 3rd subparagraph of paragraph 1.

Amendment 213

Proposal for a directive – amending act

Article 2 – point 43

Directive 2009/138/EC

Article 231 – paragraph 3

Text proposed by the Commission

Amendment

3. *During* the period referred to in paragraph 2, *the group supervisor and any of the other supervisory authorities concerned may consult* EIOPA. *EIOPA shall also be consulted where the participating undertaking so requests.*

3. *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, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and applied by the supervisory authorities concerned.*

Where EIOPA is consulted, all supervisory authorities concerned shall be informed and the period referred to in paragraph 2 shall be extended by two months.

If, in accordance with Article 41(2) and (3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the group supervisor shall take a final decision. That decision shall be recognised as determinative and applied by the supervisory authorities concerned. The six-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the six-month period or after a joint decision has been reached.

Or. en

Justification

Consistency with Omnibus I, CRD and FCD.

Amendment 214

Proposal for a directive – amending act

Article 2 – point 43

Directive 2009/138/EC

Article 231 – paragraph 4

Text proposed by the Commission

4. The group supervisor shall provide the applicant with a document setting out the fully reasoned joint decision referred to in paragraph 2.

Where EIOPA has been consulted in accordance with paragraph 3, the supervisory authorities concerned shall duly consider such advice before taking their joint decision. The group supervisor

Amendment

4. EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

shall provide the applicant with a document setting out the fully reasoned joint decision and an explanation of any significant deviation from the advice adopted by EIOPA.

Or. en

Justification

Consistency with Omnibus I, CRD and FCD.

Amendment 215

Proposal for a directive – amending act

Article 2 – point 43

Directive 2009/138/EC

Article 231 – paragraph 5

Text proposed by the Commission

5. In the absence of a joint decision within the periods set out in paragraphs 2 and 3 respectively, the group supervisor shall make its own decision on the application.

In making its decision, the group supervisor shall duly take into account the following:

(a) any views and reservations of the other supervisory authorities concerned expressed during the applicable period;

(b) where EIOPA has been consulted, its advice.

The group supervisor shall provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision and an explanation of any significant deviation from any advice adopted by EIOPA.

That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

Amendment

5. Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the group supervisor shall provide the applicant with a document setting out the full reasons.

Justification

Consistency with Omnibus I, CRD and FCD.

Amendment 216

Proposal for a directive – amending act

Article 2 – point 43

Directive 2009/138/EC

Article 231 – paragraph 6

Text proposed by the Commission

6. If, at the end of the periods referred to in paragraphs 2 and 3, respectively, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation .../... [EIOPA], the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision.

The periods referred to in paragraphs 2 and 3 respectively shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the periods referred to in paragraphs 2 and 3 respectively or after a joint decision has been reached."

Amendment

6. In the absence of a joint decision within six months from the date of receipt of the complete application by the group, the group supervisor shall make its own decision on the application.

In making its decision, the group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned expressed during the applicable period.

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

That decision shall be recognised as determinative and applied by the supervisory authorities concerned."

Justification

Consistency with Omnibus I, CRD and FCD.

Amendment 217

Proposal for a directive – amending act

Article 2 – point 43

Directive 2009/138/EC

Article 231 – paragraph 7

Text proposed by the Commission

Amendment

7. Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in accordance with Article 37, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model.

In exceptional circumstances, where such capital add-on would not be appropriate, the supervisory authority may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title I, Chapter VI, Section 4, Subsections 1 and 2. In accordance with Article 37(1)(a) and (c), the supervisory authority may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula.

The supervisory authority shall explain any decision referred to in the first and

second subparagraphs to both the insurance or reinsurance undertaking and the *other members of the college of supervisors.*

EIOPA may issue guidelines to ensure consistent and coherent application of this paragraph."

Or. en

Amendment 218

Proposal for a directive – amending act

Article 2 – point 43 a (new)

Directive 2009/138/EC

Article 232 – paragraph 3

Text proposed by the Commission

Amendment

(43a) In Article 232, paragraph 3 is replaced by the following:

"Article 37(1) to (5), together with the delegated acts, regulatory technical standards and implementing technical standards taken in accordance with Article 37(6) to (7), shall apply mutatis mutandis."

Or. en

Amendment 219

Proposal for a directive – amending act

Article 2 – point 43 b (new)

Directive 2009/138/EC

Article 232 – paragraph 6 – subparagraph 3

Text proposed by the Commission

Amendment

(43b) In Article 233(6), the third subparagraph is replaced by the following:

"Article 37(1) to (5), together with the

delegated acts, regulatory technical standards and implementing technical standards taken in accordance with Article 37(6) to (7), shall apply mutatis mutandis."

Or. en

Amendment 220

Proposal for a directive – amending act

Article 2 – point 44

Directive 2009/138/EC

Article 234

Text proposed by the Commission

Delegated acts

The Commission shall adopt delegated acts in accordance with Article 301a and subject to the conditions of Articles 301b and 301c specifying the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233 to ensure uniform application within the Union."

Amendment

Regulatory technical standards

In order to ensure consistent harmonisation in relation to group solvency, EIOPA shall develop draft regulatory technical standards to specify the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233.

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Justification

These delegated acts require supervisory expertise.

Amendment 221

Proposal for a directive – amending act

Article 2 – point 45

Directive 2009/138/EC

Article 237

Text proposed by the Commission

(45) Article 237 is **amended as follows**:

(a) Paragraphs 3, 4 and 5 are replaced by the following:

"3. During the period referred to in paragraph 2, **in the case of diverging views**

Amendment

(45) Article 237 **is replaced by the following**:

"Article 237

Subsidiaries of an insurance or reinsurance undertaking: decision on the application

1. In the case of applications for permission to be subject to the rules laid down in Articles 238 and 239, the supervisory authorities concerned shall work together within the college of supervisors, in full consultation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the supervisory authority having authorised the subsidiary. That supervisory authority shall inform and forward the complete application to the other *members of* the college of supervisors without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.

3. If, within the three-month period referred to in paragraph 2, **any of the**

concerning the approval of the application referred to in paragraph 1, the group supervisor or any of the other supervisory authorities concerned may consult EIOPA. Where EIOPA is consulted, all supervisory authorities concerned shall be informed and the period referred to in paragraph 2 shall be extended by one month.

Where EIOPA has been consulted, the supervisory authorities concerned shall duly consider such advice before taking their joint decision.

4. *The supervisory authority having authorised the subsidiary shall provide to the applicant the joint decision referred to in paragraphs 2 and 3, shall state the full reasons and shall, where EIOPA has been*

supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

If, in accordance with Article 41(2) and (3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the group supervisor shall take a final decision. That decision shall be recognised as determinative and applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached.

4. *EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.*

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5. *Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the supervisory authority having authorised the subsidiary shall provide the applicant with a*

consulted, contain an explanation of any significant deviation from the advice adopted by EIOPA. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

5. In the absence of a joint decision of the supervisory authorities concerned within the *periods* set out in *paragraphs 2 and 3*, the group supervisor shall take its own decision with regard to the application.

In taking its decision, the group supervisor shall duly consider the following:

(a) any views and reservations of the supervisory authorities concerned expressed during the applicable period;

(b) any reservations of the other supervisory authorities within the college of supervisors expressed during the applicable period;

(c) where the EIOPA has been consulted, its advice.

The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned *and any advice of EIOPA.* The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision."

(b) The following paragraph 6 is added:

"6. Where, at the end of the periods referred to in paragraphs 2 and 3 of this Article, respectively, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation .../... [EIOPA], the supervisory authority concerned shall defer its decision and await any decision that EIOPA may take

document setting out the full reasons. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

6. In the absence of a joint decision of the supervisory authorities concerned within the *three-month period* set out in *paragraph 2*, the group supervisor shall take its own decision with regard to the application.

In taking its decision, the group supervisor shall duly consider the following:

(a) any views and reservations of the supervisory authorities concerned expressed during the applicable period;

(b) any reservations of the other supervisory authorities within the college of supervisors expressed during the applicable period.

The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned. The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision. *The decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned."*

in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision.

The periods referred to in paragraphs 2 and 3, respectively, shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation. EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the periods referred to in paragraphs 2 and 3, respectively, or after a joint decision has been reached."

Or. en

Amendment 222

Proposal for a directive – amending act

Article 2 – point 45 a (new)

Directive 2009/138/EC

Article 238 – paragraph 4

Text proposed by the Commission

Amendment

(45a) In Article 238, paragraph 4 is replaced by the following:

"4. The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority having authorised the subsidiary or on other possible measures.

That agreement shall be recognised as determinative and applied by the supervisory authorities concerned."

Or. en

Amendment 223

Proposal for a directive – amending act

Article 2 – point 46

Directive 2009/138/EC

Article 238 – paragraph 5

Text proposed by the Commission

5. Where the supervisory authority and the group supervisor disagree, either supervisor may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../... [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within **two months** of such referral. The matter shall not be referred to EIOPA after the end of the one month period referred to in this subparagraph or after an agreement has been reached within the college in accordance with paragraph 4 of this Article.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with **Article 19(3)** of that Regulation, and shall take its decision in conformity with EIOPA's decision.

The decision shall state the full reasons on which it is based.

The decision shall be submitted to the subsidiary and to the college of supervisors.

Amendment

5. Where the supervisory authority and the group supervisor disagree, either supervisor may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within **one month** of such referral. **The one-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.** The matter shall not be referred to EIOPA after the end of the one month period referred to in this subparagraph or after an agreement has been reached within the college in accordance with paragraph 4 of this Article.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with **Article 19** of that Regulation, and shall take its decision in conformity with EIOPA's decision.

That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

The decision shall state the full reasons on which it is based.

The decision shall be submitted to the subsidiary and to the college of supervisors.

Or. en

Amendment 224

Proposal for a directive – amending act

Article 2 – point 47

Directive 2009/138/EC

Article 239 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. Where the supervisory ***authority and the group supervisor disagree*** on the approval of the recovery plan ***at the end of the four months*** period referred to in paragraph 1 ***of this Article*** or on the approval of the proposed measures ***at the end of*** the one month period referred to in paragraph 2 ***of this Article, either supervisor may, at the end of the applicable period,*** refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../... [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral. The matter shall not be referred to EIOPA after the end of the ***applicable*** period referred to in this subparagraph or after an agreement has been reached within the college in accordance with the second subparagraph of paragraph 1 or the second subparagraph of paragraph 2 ***of this Article***.

Amendment

4. Where ***any of*** the supervisory ***authorities concerned disagrees*** on the approval of the recovery plan ***within*** the ***four-month*** period referred to in paragraph 1 or on the approval of the proposed measures ***within*** the one month period referred to in paragraph 2, ***any supervisory authority*** may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral. The matter shall not be referred to EIOPA after the end of the ***four-month or one-month*** period ***respectively*** referred to in this subparagraph or after an agreement has been reached within the college in accordance with the second subparagraph of paragraph 1 or the second subparagraph of paragraph 2. ***The four-month or one-month period respectively shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.***

Or. en

Justification

This concerns disputes within the college, not just between a supervisory authority and the group supervisor.

Amendment 225

Proposal for a directive – amending act

Article 2 – point 47

Directive 2009/138/EC

Article 239 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that regulation, and shall take its final decision in conformity with EIOPA's decision.

Amendment

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that regulation, and shall take its final decision in conformity with EIOPA's decision. ***That decision shall be recognised as determinative and applied by the supervisory authorities concerned.***

Or. en

Amendment 226

Proposal for a directive – amending act

Article 2 – point 48

Directive 2009/138/EC

Article 241 – introductory part

Text proposed by the Commission

The Commission shall adopt delegated acts, in accordance with Article 301a ***and subject to the conditions of Articles 301b and 301c***, specifying:

Amendment

The Commission shall adopt delegated acts, in accordance with Article 301a specifying:

Or. en

Amendment 227

Proposal for a directive – amending act

Article 2 – point 49

Directive 2009/138/EC

Article 242 – paragraph 1

Text proposed by the Commission

(49) ***In Article 242(1), the date "31 October 2014" is replaced by the date "31 December 2014".***

Amendment

(49) Article 242(1) ***is replaced by the following:***

"1. By 31 December 2014, the Commission shall make an assessment of the application of Title III, in particular as regards the cooperation of supervisory authorities within, and functionality of, the college of supervisors and the supervisory practices concerning setting the capital add-ons, and shall present a report to the European Parliament and the Council accompanied, where appropriate, by proposals for the amendment of this Directive."

Or. en

Justification

The legal status of CEIOPS, now EIOPA, has been clarified in the way Parliament wanted: it now has a legal personality.

Amendment 228

Proposal for a directive – amending act

Article 2 – point 50

Directive 2009/138/EC

Article 242 – paragraph 2

Text proposed by the Commission

(50) ***In Article 242(2), the date "31 October 2015" is replaced by the date "31 December 2015".***

Amendment

(50) Article 242(2) ***is amended as follows:***

(a) the date "31 October 2015" is replaced by the date "31 December 2015";

(b) point (e) is deleted.

Or. en

Justification

A legally binding framework for the mediation of supervisory disputes has been established in the EIOPA regulation. That process will be reviewed under that Regulation.

Amendment 229

Proposal for a directive – amending act

Article 2 – point 51

Directive 2009/138/EC

Article 244 – paragraph 4

Text proposed by the Commission

4. The Commission may adopt delegated acts in accordance with Article 301a ***and subject to the conditions of Articles 301b and 301c*** as regards the definition ***and identification*** of a significant risk concentration ***and the reporting on such a risk concentration*** for the purposes of paragraphs 2 and 3.

Amendment

4. The Commission may adopt delegated acts in accordance with Article 301a as regards the definition of a significant risk concentration for the purposes of paragraphs 2 and 3.

In order to ensure consistent harmonisation in relation to supervision of risk concentration, EIOPA may develop draft regulatory technical standards to specify the identification of a significant risk concentration for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

In order to ensure uniform conditions of application of this Article, EIOPA may develop draft implementing technical standards to establish standard forms, templates and procedures for the reporting on such risk concentrations for the purposes of paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article

Amendment 230

Proposal for a directive – amending act

Article 2 – point 52

Directive 2009/138/EC

Article 245 – paragraph 4

Text proposed by the Commission

4. The Commission may adopt delegated acts in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c** as regards the definition **and identification** of a significant intra-group transaction **and the reporting on such an intra-group transaction** for the purposes of paragraphs 2 and 3.

Amendment

4. The Commission may adopt delegated acts in accordance with Article 301a as regards the definition of a significant intra-group transaction for the purposes of paragraphs 2 and 3.

In order to ensure consistent harmonisation in relation to supervision of intra-group transactions, EIOPA may develop draft regulatory technical standards to specify the identification of a significant intra-group transaction for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

In order to ensure uniform conditions of application of this Article, EIOPA may develop draft implementing technical standards to establish standard forms, templates and procedures for the reporting on such intra-group transactions for the purposes of paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth

subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Amendment 231

Proposal for a directive – amending act

Article 2 – point 53

Directive 2009/138/EC

Article 247 – paragraph 3 (new)

Text proposed by the Commission

Amendment

Article 247(3) is replaced by the following:

"3. In particular cases, the supervisory authorities concerned may, at the request of any of the authorities, take a joint decision to derogate from the criteria set out in paragraph 2 where their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings' activities in different countries, and designate a different supervisory authority as group supervisor.

For that purpose, any of the supervisory authorities concerned may request that a discussion be opened on whether the criteria referred to in paragraph 2 are appropriate. Such a discussion shall not take place more often than annually.

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.

"The designated group supervisor shall submit the joint decision to the group stating the full reasons."

Or. en

Amendment 232

Proposal for a directive – amending act

Article 2 – point 53

Directive 2009/318/EC

Article 247 – paragraph 4

Text proposed by the Commission

4. ***During*** the three-month period referred to in the third subparagraph of paragraph 3, any of the supervisory authorities concerned ***may request that EIOPA be consulted. Where EIOPA is consulted, that period shall be extended by two months.***

Amendment

4. ***If, within*** the three-month period referred to in the third subparagraph of paragraph 3, any of the supervisory authorities concerned ***has referred the matter to EIOPA in accordance with Article 19, paragraphs 1 to 3 and 6, of Regulation (EU) No 1094/2010, the supervisory authorities concerned shall defer their joint decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take their joint decision in conformity with EIOPA's decision. That joint decision shall be recognised as determinative and applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.***

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached. The designated group supervisor shall submit the joint decision to the group and to the college of supervisors stating the full reasons.

Or. en

Amendment 233

Proposal for a directive – amending act

Article 2 – point 53

Directive 2009/138/EC

Article 247 – paragraph 5

Text proposed by the Commission

Amendment

5. Where EIOPA is consulted, the supervisory authorities concerned shall duly take into account EIOPA's advice before taking their joint decision. The joint decision shall state the full reasons and shall contain an explanation of any significant deviation from any advice given by EIOPA.

deleted

Or. en

Amendment 234

Proposal for a directive – amending act

Article 2 – point 53

Directive 2009/138/EC

Article 247 – paragraph 6

Text proposed by the Commission

Amendment

6. In the absence of a joint decision *derogating from the criteria set out in paragraph 2 of this Article*, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2 of this Article. *However, if at the end of the periods set out in paragraphs 3 and 4 of this Article any of the supervisors concerned have referred the matter to EIOPA in accordance with Article 19 of Regulation .../... [EIOPA], they shall await the decision of EIOPA.*

6. In the absence of a joint decision, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2 of this Article.

The periods referred to in paragraphs 3 and 4, respectively, shall be deemed the

conciliation period within the meaning of Article 19(2) of that Regulation. EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after a joint decision has been reached.

The task of group supervisor shall be exercised by the supervisory authority identified in the decision taken by EIOPA. The decision shall be submitted to the group and to the college of supervisors.

Or. en

Amendment 235

Proposal for a directive – amending act

Article 2 – point 53

Directive 2009/138/EC

Article 247 – paragraph 7 – subparagraph 2

Text proposed by the Commission

In the event that any major difficulties arise from the application of the criteria set out in paragraphs 2 and 3 of this Article, the Commission shall adopt delegated acts, in accordance with Article 301a *and subject to the conditions of Articles 301b and 301c*, specifying those criteria.

Amendment

In the event that any major difficulties arise from the application of the criteria set out in paragraphs 2 and 3 of this Article, the Commission shall adopt delegated acts, in accordance with Article 301a *further* specifying those criteria.

Or. en

Amendment 236

Proposal for a directive – amending act

Article 2 – point 54 – point a

Directive 2009/138/EC

Article 248 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where the group supervisor fails to carry out the tasks referred to in paragraph 1 or where the members of the college do not

Amendment

Where the group supervisor fails to carry out the tasks referred to in paragraph 1 or where the members of the college *of*

cooperate to the extent required in this paragraph, any of the supervisory authorities concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by **Article 11** of that Regulation.

supervisors do not cooperate to the extent required in this paragraph, any of the supervisory authorities concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19, **paragraph 1 to 3 and 6**, of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by **Article 19** of that Regulation.

Or. en

Justification

Alignment with Article 21 EIOPA Regulation.

Amendment 237

Proposal for a directive – amending act

Article 2 – point 54 – point a a (new)

Directive 2009/13/EC

Article 248 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

(aa) in paragraph 3, the first subparagraph is replaced by the following:

"3. The membership of the college of supervisors shall include the group supervisor, the supervisory authorities of all the Member States in which the head office of all subsidiary undertakings is situated, and EIOPA."

Or. en

Justification

Alignment with Article 21 EIOPA Regulation.

Amendment 238

Proposal for a directive – amending act

Article 2 – point 54 – point b

Directive 2009/138/EC

Article 248 – paragraph 4 – subparagraph 2

Text proposed by the Commission

(b) The second **and third subparagraphs** of paragraph 4 **are** replaced by the following:

"Where diverging views concerning the coordination arrangements arise, any member of the college of supervisors may refer the matter to EIOPA.

Amendment

(b) The second **subparagraph** of paragraph 4 **is** replaced by the following:

"Where diverging views concerning the coordination arrangements arise, any member of the college of supervisors may refer the matter to EIOPA **and request its assistance in accordance with Article 19, paragraph 1 to 3 and 6, of Regulation EU (No) 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by Article 19 of that Regulation. That decision shall be recognised as determinative and applied by the supervisory authorities concerned.**"

Or. en

Amendment 239

Proposal for a directive – amending act

Article 2 – point 54 – point b

Directive 2009/138/EC

Article 248 – paragraph 4 – subparagraph 3

Text proposed by the Commission

After consulting the supervisory authorities concerned, the group supervisor shall duly consider any advice produced by EIOPA within two months of receipt thereof before taking its final decision. The decision shall state the full reasons and shall contain an explanation of any significant deviation from any advice given by EIOPA. The group supervisor shall transmit the decision to

Amendment

deleted

the other supervisory authorities concerned."

Or. en

Amendment 240

Proposal for a directive – amending act
Article 2 – point 54 – point b a (new)
Directive 2009/138/EC
Article 248 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

(ba) in paragraph 5, the second paragraph is replaced by the following:

"Without prejudice to the rights and duties allocated by this Directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor, [...] the other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities."

Or. en

Justification

Alignment with Article 21 EIOPA Regulation.

Amendment 241

Proposal for a directive – amending act
Article 2 – point 54 – point c
Directive 2009/138/EC
Article 248 – paragraph 6

Text proposed by the Commission

6. Powers are conferred on the Commission to adopt implementing technical standards concerning the operational functioning of colleges.

Those implementing technical standards shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA]. EIOPA shall develop draft implementing technical standards by 31 December 2011 and develop reviewed draft standards for submission to the Commission at least every three years.

Amendment

6. EIOPA shall elaborate guidelines for the operational functioning of colleges of supervisors on the basis of comprehensive reviews of their work in order to assess the level of convergence between them. Such reviews shall be carried out at least every three years. Member States shall ensure that the group supervisor transmits to EIOPA the information on the functioning of the colleges of supervisors and on any difficulties encountered that are relevant for those reviews.

In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA may develop draft regulatory technical standards to specify the operational functioning of colleges of supervisors based on the guidelines referred to in the first subparagraph.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 242

Proposal for a directive – amending act
Article 2 – point 54 – point c
Directive 2009/138/EC
Article 248 – paragraph 7

Text proposed by the Commission

7. The Commission shall adopt delegated acts in accordance with Article 301a and subject to the conditions of Articles 301b and 301c for the coordination of group

Amendment

7. In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA shall develop draft

supervision for the purposes of paragraphs 1 to 6, including the definition of "significant branch".

regulatory technical standards to specify the coordination arrangements for group supervision for the purposes of paragraphs 1 to 6, including the definition of "significant branch".

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 243

Proposal for a directive – amending act

Article 2 – point 54 a (new)

Directive 2009/138/EC

Article 249 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(54a) In Article 249(1), subparagraph 2 is replaced by the following:

"With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same Member State, they shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In that regard, the supervisory authorities concerned and the group supervisor shall communicate to one another without delay all relevant information as soon as it becomes available or exchange information on

request. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisory authorities, and information provided by the group.

Or. en

Justification

An obligation to request information did not exist and is necessary for the new paragraph 1a.

Amendment 244

Proposal for a directive – amending act

Article 2 – point 55

Directive 2009/138/EC

Article 249 – paragraph 1a

Text proposed by the Commission

1a. Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within ***a reasonable time***, the supervisory authorities may refer the matter to EIOPA ***and request its assistance***.

Where the matter is referred to EIOPA, without prejudice to the provisions of Article 258 TFEU, EIOPA may act in accordance with the powers conferred on it by Article 19 of Regulation (EU) No ***.../2010 [EIOPA]***.

Amendment

1a. Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within ***two weeks***, the supervisory authorities may refer the matter to EIOPA.

Where the matter is referred to EIOPA, without prejudice to the provisions of Article 258 TFEU, EIOPA may act in accordance with the powers conferred on it by Article 19, ***paragraphs 1 to 3 and 6***, of Regulation (EU) No ***1094/2010***.

Or. en

Amendment 245

Proposal for a directive – amending act

Article 2 – point 56 – point a

Directive 2009/138/EC

Article 249 – paragraph 3

Text proposed by the Commission

3. **The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, determining** the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned.

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

Amendment

3. **In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA shall develop draft regulatory technical standards to specify:**

- the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned.
- the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

EIOPA shall submit those draft regulatory technical standards to the Commission by 1 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Or. en

Amendment 246

Proposal for a directive – amending act

Article 2 – point 56 – point b

Directive 2009/138/EC

Article 249 – paragraph 4

Text proposed by the Commission

4. Powers are conferred on the Commission to adopt implementing technical standards to **determine the conditions of application of this Article as supplemented by the delegated acts referred to in paragraph 3 of this Article concerning the matters covered by those delegated acts, specifically with regard to the templates and procedures for** the submission of information to the group supervisor as well as the procedure for the cooperation and the exchange of information between supervisory authorities as laid down in this Article.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards **to the Commission by 31 December 2011.**

Amendment

4. In order to ensure uniform conditions of application in relation to the coordination between supervisory authorities, EIOPA may develop draft implementing technical standards to **establish standard forms, templates and procedures for** the submission of information to the group supervisor as well as the procedure for the cooperation and the exchange of information between supervisory authorities as laid down in this Article.

Power is conferred on the Commission to adopt the implementing technical standards **referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010."**

Or. en

Amendment 247

Proposal for a directive – amending act

Article 2 – point 57

Directive 2009/138/EC

Article 254 – paragraph 2

Text proposed by the Commission

(57) Article 254(2) is replaced by the following:

" 2. Member States shall provide that their authorities responsible for exercising group supervision shall have access to any information relevant for the purposes of that supervision regardless of

Amendment

deleted

*the nature of the undertaking concerned.
Articles 35 and 308a(1) shall apply
mutatis mutandis."*

Or. en

Amendment 248

Proposal for a directive – amending act

Article 2 – point 58

Directive 2009/138/EC

Article 255 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Where the request to another supervisory authority to have a verification carried out in accordance with this paragraph ***has been rejected or*** has not been acted within ***a reasonable period of time***, or where ***a request of*** the supervisory authority ***which made the request to participate in the verification under*** the third subparagraph ***has been rejected or has not been acted upon within a period of reasonable time***, the requesting authority may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Amendment

Where the request to another supervisory authority to have a verification carried out in accordance with this paragraph has not been acted ***upon*** within ***two weeks***, or where the supervisory authority ***is practically prohibited to exercise its right to participate in accordance with*** the third subparagraph, the requesting authority may refer the matter to EIOPA and may request its assistance in accordance with Article 19, ***paragraphs 1 to 3 and 6***, of Regulation ***EU No 1094/2010***. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Or. en

Justification

Consistency with Articles 33, 38 and Omnibus I, Article 5(10)(c).

Amendment 249

Proposal for a directive – amending act

Article 2 – point 58

Directive 2008/138/EC

Article 255 – paragraph 2 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site verifications where they are carried out jointly by two or more supervisory authorities.

Or. en

Justification

Consistency with Articles 33, 38 and Omnibus I, Article 5(10)(c).

Amendment 250

Proposal for a directive – amending act

Article 2 – point 59 – point a

Directive 2009/138/EC

Article 256 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall require participating insurance and reinsurance undertakings ***or*** insurance holding companies to disclose publicly, on an annual basis, a report on the solvency and financial condition at the level of the group. Articles 51, 53, 54, 55 ***and 308a(4)*** shall apply *mutatis mutandis*.

1. Member States shall require participating insurance and reinsurance undertakings ***and*** insurance holding companies ***and mixed financial holding companies*** to disclose publicly, on an annual basis, a report on the solvency and financial condition at the level of the group. Articles 51, 53, 54 ***and 55*** shall apply *mutatis mutandis*.

Or. en

Justification

Consistency with the FCD revision.

Amendment 251

Proposal for a directive – amending act

Article 2 – point 59 – point b

Directive 2009/138/EC

Article 256 – paragraph 4

Text proposed by the Commission

4. The Commission shall adopt delegated acts, in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c**, further specifying the information which must be disclosed **and the means by which this is to be achieved** as regards the single solvency and financial condition report.

Amendment

4. The Commission shall adopt delegated acts, in accordance with Article 301a further specifying the information which must be disclosed as regards the single solvency and financial condition report.

Or. en

Justification

Consistency with the FCD revision.

Amendment 252

Proposal for a directive – amending act

Article 2 – point 59 – point c

Directive 2009/138/EC

Article 256 – paragraph 5

Text proposed by the Commission

5. ***Powers are conferred on the Commission to adopt*** implementing technical standards ***to determine the conditions of application of this Article as supplemented by the delegated acts referred to in paragraph 4 of this Article, concerning the matters covered by those delegated acts, specifically with regard to the templates for*** the disclosure of the group solvency and financial report as laid down in this Article.

The implementing technical standards ***referred to in the first subparagraph shall***

Amendment

5. ***In order to ensure uniform conditions of application in relation to the group solvency and financial condition report, EIOPA shall develop draft*** implementing technical standards ***on the procedures to be followed and formats and templates to be used for*** the disclosure of the group solvency and financial report as laid down in this Article.

EIOPA shall submit those draft implementing technical standards ***to the***

be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011.

Commission by 1 June 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Or. en

Amendment 253

Proposal for a directive – amending act

Article 2 – point 59 a (new)

Directive 2009/138/EC

Article 256 a (new)

Text proposed by the Commission

Amendment

(59a) The following article is inserted:

"Article 256a

Group structure

Member States shall require insurance and reinsurance undertakings to disclose publicly, at the level of the insurance or reinsurance group, on an annual basis, the legal structure and the governance and organisational structure, including all regulated entities, non-regulated entities and material branches belonging to the group."

Or. en

Amendment 254

Proposal for a directive – amending act

Article 2 – point 60

Directive 2009/138/EC

Article 258 – paragraph 3

Text proposed by the Commission

The Commission may adopt delegated acts, in accordance with Article 301a **and subject to the conditions of Articles 301b and 301c**, for the coordination of enforcement measures referred to in paragraphs 1 and 2.

Amendment

3. The Commission may adopt delegated acts, in accordance with Article 301a for the coordination of enforcement measures referred to in paragraphs 1 and 2.

Or. en

Amendment 255

Proposal for a directive – amending act

Article 2 – point 61

Directive 2009/138/EC

Article 259 – paragraph 1

Text proposed by the Commission

1. EIOPA shall report to the European Parliament annually in accordance with **Article 35** of Regulation.../...[EIOPA].

Amendment

1. EIOPA shall report to the European Parliament annually in accordance with **Article 50** of Regulation (EU) No 1094/2010.

Or. en

Amendment 256

Proposal for a directive – amending act

Article 2 – point 62 – point a

Directive 2009/138/EC

Article 260 – paragraph 1 – subparagraph 2

Text proposed by the Commission

"The verification shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 247(2) were to apply, at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Union or on

Amendment

The verification shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 247(2) were to apply (**hereinafter the "acting group supervisor"**), at the request of the parent undertaking or of any of the insurance and reinsurance

its own initiative, unless the Commission had concluded previously in respect of the equivalence of the third country concerned. In so doing, that *supervisory authority* shall consult the other supervisory authorities concerned *and EIOPA*, before taking a decision."

undertakings authorised in the Union or on its own initiative, unless the Commission had concluded previously in respect of the equivalence *or temporarily equivalence* of the third country concerned. *The acting group supervisor shall cooperate with EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010.*

In so doing, that *acting group supervisor* shall, *assisted by EIOPA*, consult the other supervisory authorities concerned, before taking a decision *on equivalence*. *This decision shall be taken in accordance with the criteria adopted in accordance with paragraph 2. The acting group supervisor shall not take any decision in relation to a third-country that is contradicting any decision taken vis-à-vis that third-country previously.*

Where supervisory authorities disagree with the decision taken in accordance with subparagraph 2, they may refer the matter to EIOPA and request its assistance in accordance with Article 19, paragraphs 1 to 3 and 6, of Regulation (EU) No 1094/2010 within 3 months after notification of the decision by the acting group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Or. en

Amendment 257

Proposal for a directive – amending act

Article 2 – point 62 – point b

Directive 2009/138/EC

Article 260 – paragraph 2

Text proposed by the Commission

2. The Commission may adopt delegated acts, in accordance with Article 301a *and subject to the conditions of Articles 301b*

Amendment

2. The Commission may adopt delegated acts, in accordance with Article 301a specifying the criteria to assess whether the

and 301c, specifying the criteria to assess whether the *prudential* regime in a third country for the supervision of groups is equivalent to that laid down in this Title.

supervisory regime in a third country for the supervision of groups is equivalent to that laid down in this Title.

Or. en

Amendment 258

Proposal for a directive – amending act

Article 2 – point 62 – point b a (new)

Directive 2009/138/EC

Article 260 – paragraph 3

Text proposed by the Commission

Amendment

(ba) paragraph 3 is replaced by the following:

"3. If the criteria adopted in accordance with the paragraph 2 have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, decide that the supervisory regime of that third country is equivalent to that laid down in this Title.

Those decisions shall be regularly reviewed to take into account any changes to the supervisory regime laid down in this Title, and to the supervisory regime in the third country.

EIOPA shall publish and keep up-to-date on its website a list of all third countries referred to in this Article.

When a decision has been adopted by the Commission, in accordance with the first subparagraph, in respect of a third country, that decision shall be recognised as determinative for the purposes of the verification referred to in paragraph 1."

Or. en

Justification

The regulatory procedure needs to be Lisbonised. For reasons of transparency, the third countries that are equivalent need to be made public.

Amendment 259

Proposal for a directive – amending act

Article 2 – point 62 – point c

Directive 2009/138/EC

Article 260 – paragraph 4

Text proposed by the Commission

4. By way of derogation from Article 261(1), the first paragraph of Article 262(1) and the second paragraph of Article 263, Member States may, for a transitional period, rely on the group supervision exercised by the third-country supervisory authorities. The transitional period shall last for a maximum of 5 years from the date referred to in the first subparagraph of Article 309(1). This derogation shall only apply where the Commission has made a decision in accordance with paragraph 5 that specified conditions have been met by the third country.

Amendment

4. Where a decision adopted by the Commission in accordance with paragraph 5 concludes that the supervisory regime in the third country is not temporarily equivalent, Article 262 shall apply.

Where a decision adopted by the Commission in accordance with paragraph 3 concludes that the supervisory regime in the third country is not equivalent, Article 262 shall apply.

Or. en

Amendment 260

Proposal for a directive – amending act

Article 2 – point 62 – point d

Directive 2009/138/EC

Article 260 – paragraph 5

5. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying in relation to paragraph 4 the length of the transitional period which may be shorter than the maximum of 5 years and the conditions which are to be met by the third country. Those conditions shall cover commitments given by the supervisory authorities, their convergence to an equivalent regime over a set period of time, the existing or intended content of the regime, and matters of cooperation, exchange of information and professional secrecy obligations.

5. Without prejudice to paragraph (4)2, the Commission may, in accordance with Article 301a and for a limited period, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, decide that the supervisory regime of a third country applied to undertakings with the head office in that third country is temporarily equivalent to that laid down in this Title, if at least the following conditions have been met by that third country:

(a) the third country has given written commitments to the European Union to adopt and apply a supervisory regime that is capable of being assessed equivalent in accordance with paragraph 3, before the end of this period;

(b) the third country has established a convergence programme to fulfil this commitment;

(c) sufficient resources have been allocated to fulfil this commitment;

(d) the present third country's supervisory regime is risk-based and based on market valuation of assets and liabilities;

(e) agreements have been concluded to exchange confidential supervisory information, in accordance with Article 264;

(f) the third country is assessed to comply with the core principles, principles and standards adopted by the International Association of Insurance Supervisors (IAIS).

Any decisions on temporary equivalence shall take into account the reports by the Commission in accordance with Article

177. Those decisions shall be regularly reviewed, on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission and EIOPA semi-annually.

EIOPA shall publish and keep up-to-date on its website a list of all third countries referred to in this Article.

The Commission may adopt delegated acts, in accordance with Article 301a, further specifying the conditions laid down in the first subparagraph.

When a decision has been adopted by the Commission, in accordance with the first subparagraph, in respect of a third country, that decision shall be recognised as determinative for the purposes of the verification referred to in paragraph 1.

Or. en

Amendment 261

Proposal for a directive – amending act

Article 2 – point 62 – point e

Directive 2009/138/EC

Article 260 – paragraph 6

Text proposed by the Commission

6. The *Commission may adopt, a decision in respect of prudential regimes of third countries* referred to in *paragraph 4 that the conditions set out in paragraph 4 and the delegated act have been met by the* third country.

Those decisions shall be adopted after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the regulatory procedure referred to in Article 301(2). The decisions shall be reviewed regularly.

Amendment

6. The *period referred to in paragraph 5 shall be five years from the date* referred to in *Article 310 or until the date on which, in accordance with paragraph 3, the supervisory regime of that* third country *has been deemed to be equivalent to that laid down in this Title, whichever is the earliest.*

Amendment 262

Proposal for a directive – amending act

Article 2 – point 62 – point e a (new)

Directive 2009/138/EC

Article 260 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(ea) the following paragraph is added:

"6a. Where a decision in accordance with paragraph 5 is taken that the supervisory regime of a third country is temporarily equivalent, Member States may apply Article 261. EIOPA shall issue guidelines for the consistent and coherent application by Member States of this paragraph by 1 January 2014. Member States shall make every effort to comply with those guidelines. Where a Member State decides not to apply Article 261 in respect of a group, no other Member State may apply that Article in respect of that group."

Amendment 263

Proposal for a directive – amending act

Article 2 – point 63

Directive 2009/138/EC

Article 262 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. In the absence of equivalent supervision referred to in Article 260, Member States shall apply either of the following to insurance and reinsurance undertakings:

1. In the absence of equivalent supervision referred to in Article 260, ***or where Member States do not apply Article 261 in the event of temporarily equivalence in accordance with Article 260(7)***, Member States shall apply either of the following to

insurance and reinsurance undertakings:

Or. en

Justification

Consistency with the AM to Article 260(7).

Amendment 264

Proposal for a directive – amending act

Article 2 – point 64 – point a

Directive 2009/138/EC

Articles 218 to 235 , Article 244 to 258 and Article 308a(9) *mutatis mutandis*

Text proposed by the Commission

Amendment

(64)(a) Articles 218 to 235, **Article 244** to 258 **and Article 308a(9)** *mutatis mutandis*

(64)(a) Articles 218 to 235, **and Articles 244** to 258 *mutatis mutandis*.

Or. en

Amendment 265

Proposal for a directive – amending act

Article 2 – point 67

Directive 2009/138/EC

Article 301 – paragraph 3

Text proposed by the Commission

Amendment

(67) **Article 301(3)** is deleted.

(67) **In Article 301, paragraphs 2 and 3** are deleted.

Or. en

Justification

The regulatory procedure is replaced by a delegated act.

Amendment 266

Proposal for a directive

Article 2 – point 68

Directive 2009/138/EC

Article 301a – paragraph 1

Text proposed by the Commission

1. The powers to adopt delegated acts *referred to in Articles 17, 31, 35, 37, 50, 56, 58, 75, 86, 92, 97, 99, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 249, 256, 258, 260 and 308b shall be* conferred on the Commission *for a period of 5 years following the entry into force of this Directive.*

The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the 5 year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 301b.

Amendment

1. The powers to adopt delegated acts *is* conferred on the Commission *subject to the conditions laid down in this Article.*

Or. en

Justification

Agreed wording in accordance with the Common Understanding, with modifications concerning timing (4 instead of 5 years, 3+3 months instead of 2+1).

Amendment 267

Proposal for a directive

Article 2 – point 68

Directive 2009/138/EC

Article 301a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The delegation of power referred to in Articles 17, 37, 50, 56, 109a, 172, 216, 217, 227, 241, 244, 245, 247, 256, 258,

260 shall be conferred on the Commission for a period of four years from..... The Commission shall draw up a report in respect of the delegated power at the latest six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*

** OJ: Please insert date of entry into force of this Directive.*

Or. en

Justification

Agreed wording in accordance with the Common Understanding, with modifications concerning timing (4 instead of 5 years, 3+3 months instead of 2+1).

Amendment 268

Proposal for a directive

Article 2 – point 68

Directive 2009/138/EC

Article 301a – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The delegation of power referred to in Articles 17, 37, 50, 56, 109a, 172, 216, 217, 227, 241, 244, 245, 247, 256, 258, 260 may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect on 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.

Justification

Agreed wording in accordance with the Common Understanding, with modifications concerning timing (4 instead of 5 years, 3+3 months instead of 2+1).

Amendment 269

Proposal for a directive

Article 2 – point 68

Directive 2009/138/EC

Article 301a – paragraph 3

Text proposed by the Commission

3. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 301b and 301c.*

Amendment

3. A delegated act adopted pursuant to Articles 17, 37, 50, 56, 109a, 172, 216, 217, 227, 241, 244, 245, 247, 256, 258, 260 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.

Justification

Agreed wording in accordance with the Common Understanding, with modifications concerning timing (4 instead of 5 years, 3+3 months instead of 2+1).

Amendment 270

Proposal for a directive

Article 2 – point 68

Directive 2009/138/EC

Article 301b

Text proposed by the Commission

Amendment

Article 301b

deleted

Revocation of the delegation

1. The delegation of power referred to in Articles 17, 31, 35, 37, 50, 56, 58, 75, 86, 92, 97, 99, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 249, 256, 258 260 and 308b may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated power which could be subject to revocation and the reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Or. en

Justification

Incorporated in Article 301a in accordance with agreed wording.

Amendment 271

Proposal for a directive

Article 2 – point 68

Directive 2009/138/EC

Article 301c

Article 301c

deleted

Objections to delegated acts

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council, that period shall be extended by one month.

2. If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act."

Or. en

Justification

Incorporated in Article 301a in accordance with agreed wording.

Amendment 272

Proposal for a directive – amending act

Article 2 – point 70

Directive 2009/138/EC

Section 3 – title

Text proposed by the Commission

*Transitional measures specified by
delegated acts*

Amendment

Insurance and reinsurance

Or. en

Amendment 273

Proposal for a directive – amending act

Article 2 – point 70

Directive 2009/138/EC

Article 308 a – title

Text proposed by the Commission

Transitional provisions

Amendment

Phasing-in

Or. en

Amendment 274

Proposal for a directive – amending act

Article 2 – point 70

Directive 2009/138/EC

Article 308 a – paragraph 1

Text proposed by the Commission

1. Where the Commission has adopted a delegated act in accordance with Article 308b(1), Article 35(5) shall not apply for a maximum period of five years from the date referred to in the first sub-paragraph of Article 309(1).

Amendment

1. Between 1 January 2013 and 31 December 2013 insurance and reinsurance undertakings and supervisors shall take all measures necessary to comply as of 1 January 2014 with the national laws, regulations and administrative provisions implementing this Directive.

Amendment 275

Proposal for a directive – amending act

Article 2 – point 70

Directive 2009/138/EC

Article 308 a – paragraph 2

Text proposed by the Commission

2. Where the Commission has adopted a delegated act in accordance with Article 308b(2), the condition referred to in Article 37(1)(a) that the supervisory authority has concluded that the risk profile of the insurance or reinsurance undertaking has deviated significantly from the assumptions underlying the Solvency Capital Requirement as calculated using the standard formula shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1). Equally, the requirement in Article 37(2) that capital add-ons imposed under point a) of Article 37(1) are to be calculated in such a way so as to ensure the undertaking complies with Article 101(3) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).

Amendment

2. From 1 January 2013 Member States shall ensure that the supervisory authorities have the power to:

(a) decide on:

(i) the approval of undertaking specific parameters in accordance with Article 104(7),

(ii) the approval of ancillary own funds in accordance with Article 90;

(iii) the approval of the classification of own funds items referred to in Article 95 subparagraph 3,

(iv) the approval of a full or partial internal model in accordance with Article 112,

- (v) the approval of ancillary own funds of an intermediate insurance holding company in accordance with Article 226(2),*
- (vi) a decision referred to in Article 228,*
- (vii) the approval of a group internal model in accordance with Article 231 and Article 233,*
- (viii) the permission to be subject to Articles 238 and 239, in accordance with Article 236;*
- (b) determine the level and scope of group supervision in accordance with sections 2 and 3 of Title III, chapter I;*
- (c) determine the choice of method to calculate group solvency in accordance with Article 220;*
- (d) make the determination on equivalence and temporary equivalence in accordance with Articles 227 and 260;*
- (e) identify the group supervisor in accordance with Article 247;*
- (f) establish a college in accordance with Article 248; and*
- (g) make the determinations referred to in Articles 262 and 263.*

Or. en

Amendment 276

Proposal for a directive – amending act

Article 2 – point 70

Directive 2009/138/EC

Article 308 a – paragraph 3

Text proposed by the Commission

3. Where the Commission has adopted a delegated act in accordance with Article 308b(3), Article 41(1) and Article 41(3) shall not apply for a maximum period of 3

Amendment

3. Without prejudice to Article 308b as of 1 July 2013 insurance and reinsurance undertakings shall:

years from the date referred to in the first sub-paragraph of Article 309(1).

(a) calculate the Solvency Capital Requirement, Minimum Capital Requirement, the amount of own funds, determine the balance sheet and profit and loss account in accordance with this Directive; and shall provide the supervisory authorities with this information;

(b) provide supervisory authorities with the information referred to in Article 35; Member States may waive this requirement for insurance and reinsurance undertakings which do not comply fully with the requirements to have appropriate systems and structures in place in accordance with Articles 35(5).

Or. en

Amendment 277

Proposal for a directive – amending act

Article 2 – point 70

Directive 2009/138/EC

Article 308 a – paragraphs 4-9

Text proposed by the Commission

Amendment

4. Where the Commission has adopted a delegated act in accordance with Article 308b(4), Article 51(1) shall not apply for a maximum period of 3 years from the date referred to in the first sub-paragraph of Article 309(1).

deleted

5. Where the Commission has adopted a delegated act in accordance with Article 308b(5), Article 75(1) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).

6. Where the Commission has adopted a delegated act in accordance with Article

308b(6), Article 76(2), Article 76(3) and Article 76(5) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).

7. Where the Commission has adopted a delegated act in accordance with Article 308b(7), Article 94 shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).

8. Where the Commission has adopted a delegated act in accordance with Article 308b(8), the first paragraph of Article 100, Article 101(3), Article 102, and Article 104 shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).

9. Where the Commission has adopted a delegated act in accordance with Article 308b(9), Article 218(2) and (3) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).

Or. en

Amendment 278

Proposal for a directive – amending act

Article 2 – point 71

Directive 2009/138/EC

Article 308b

Text proposed by the Commission

Delegated Acts

The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, regarding the following :

Amendment

Transitional periods

1. Member States may allow insurance and reinsurance undertakings or insurance and reinsurance groups with a balance sheet total less than EUR 500 billion, which do not comply with the

Solvency Capital Requirement on the date referred to in Article 310 a period not exceeding two years in which to do so provided that such undertakings or groups have, in accordance with Articles 138(2) and 142, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose.

(a) with regard to Article 308a(1), specifying the length of the transitional period which may be shorter than the maximum of 3 years, specifying any phasing of the transitional period, and specifying the transitional requirements as to the systems and structures undertakings shall have in place to comply with information required to be provided for supervisory purposes and requiring that insurance and reinsurance undertakings comply at least with the laws, regulations and administrative provisions related to production of accounts and periodic submission of returns which are adopted pursuant to Article 13 Directive of 2002/83/EC, Article 11 of Directive 84/641/EC and Article 17 of Directive 2005/68/EC.

(b) with regard to Article 308a(2), specifying the length of the transitional period which may be shorter than 10 years, specifying any phasing of the transitional period, specifying a requirement to take the assumptions underlying a transitional Solvency Capital Requirement referred to in Article 308b(8) rather than the Solvency Capital Requirement into account when concluding whether the conditions for imposing a capital add-on under Article 37(1)(a) are met and specifying the calculation of the capital add-on by reference to the calibration and confidence level attributes of that transitional Solvency Capital requirement rather than those of the standard formula Solvency Capital Requirement;

2. Member States may allow insurance and reinsurance undertakings which do not comply fully with the requirements to have appropriate systems and structures in place in accordance with Article 35(5) and Article 55(1) on the date referred to in Article 310, a period not exceeding two years in which to do so.

3. During that period, Member States may allow insurance and reinsurance undertakings which do not comply fully with the requirements to disclose publicly the information referred to in Articles 51 and 53 to 55, to disclose only the information which implemented systems and structures are able to provide.

(c) with regard to Articles 308a(3), the length of the transitional period which may be shorter than the maximum of 3 years, the phasing of the transitional period and the transitional requirements as to the system of governance and the extent to which the systems, functions, and requirements referred to in Articles 41 to 49 to be complied with by insurance and reinsurance undertakings during the transitional period and requiring that insurance and reinsurance undertakings comply at least with the laws, regulations and administrative provisions requiring sound administrative procedures and internal control which are adopted pursuant to Article 10 of Directive 2002/83/EC, Article 9 of Directive 84/641/EC and Article 15 of Directive 2005/68/EC.

(d) with regard to Article 308a(4), the length of the transitional period which may be shorter than the maximum of 3 years, any phasing of the transitional period, and any transitional requirements as to the content and timing of the information which must be publicly disclosed by insurance and reinsurance undertakings and requiring that insurance and reinsurance undertakings be at least required to disclose a report containing a high level summary of the information listed in Article 51(1).

(e) with regard to Article 308a(5) the length of the transitional period which may be shorter than the maximum of 10 years, any phasing of the transitional period, any specification of the assets and liabilities which shall be subject to transitional requirements as to valuation and the transitional requirements as to the methods and assumptions to be used in the valuation of the specified assets and liabilities and requiring that insurance and reinsurance undertakings comply at least with the Member State's laws, regulations and administrative provisions

4. Member States may allow insurance and reinsurance groups which do not comply fully with the requirements to have appropriate systems and structures in place in accordance with Articles 254 on the date referred to in Article 310 a period not exceeding two years in which to do so.

5. During that period, Member States may allow insurance and reinsurance groups which do not comply fully with the requirements to disclose publicly the information referred to in Article 256, to disclose only the information which implemented systems and structures are able to provide.

6. Basic own-funds items that were issued prior to the date referred to in Article 309(1) and that meet the following criteria shall, for the purposes of Articles 94(1) and 230, be included in Tier 1 basic own funds for up to 10 years after the date referred to in Article 310:

for valuation of such assets and liabilities which were applicable on 31 December 2012;

(f) with regard to Article 308a(6), the length of the transitional period which may be shorter than the maximum of 10 years, the phasing of the transitional period and the transitional requirements as to the methodologies and assumptions to be used in the calculation of technical provisions and which will apply during the transitional period and requiring that insurance and reinsurance undertakings comply at least with the laws, regulations and administrative provisions for the establishment of technical provisions which are adopted pursuant to Article 20 of Directive 2002/83/EC, Article 15 of Directive 73/239/EEC and Article 32 of Directive 2005/68/EC;

(g) with regard to Articles 308a(7), the length of the transitional period which may be shorter than the maximum of 10 years, the phasing of the transitional period, the specification of the own fund items subject to the transitional, and the transitional requirements as to the classification of own fund items, which will apply to those specified own funds items and requiring that during the transitional period insurance and reinsurance undertakings comply at least with the laws, regulations and administrative provisions adopted pursuant to Article 27 of Directive 2002/83/EC, Article 16 of Directive 73/239/EEC and Article 36 of Directive 2005/68/EC in respect of those own fund items;

(h) with regard to Articles 308a(8), the length of the transitional period which may be shorter than the maximum of 10 years, any phasing of the transitional period and any transitional requirements as to the calculation and use of a transitional Solvency Capital Requirement. The calculation of the

(a) the item ranks after the claims of all policyholders and beneficiaries and non-subordinated creditors;

(b) the item is only repayable or redeemable at the option of the insurance or reinsurance undertaking and may not include limited incentives to repay or redeem that item before 10 years after the issue date of that item. The repayment or redemption of that item is subject to prior supervisory approval;

(c) the item is free from encumbrances and shall not be connected with any other transaction, which when considered with that item, could result in that item not satisfying the requirements set out in the first paragraph of Article 94(2);

transitional Solvency Capital requirement may include modifications to the stresses, scenarios, correlation coefficients and parameters of the Solvency Capital Requirement standard formula that would otherwise apply. The delegated act shall also require that insurance and reinsurance undertakings comply with a transitional Solvency Capital Requirement that is no higher than the Solvency Capital Requirement and no lower than the sum of the Minimum Capital Requirement and fifty per cent of the difference between the Solvency Capital Requirement and the Minimum Capital Requirement;

(i) with regard to Article 308a(9), changes which relate to the choice of calculation method and general principles in calculating group solvency set out in Article 220 to 229 and Articles 230 to 233 and Article 235 in relation to the methods for calculating group solvency. The delegated acts may also set out the changes which relate to the calculation of group solvency under supervision at group level as referred to in Article 213(2)(c), where the equivalent supervision is absent as referred to in Article 262. Those changes to the calculation of group own funds and the group solvency capital requirement shall be consequential to any transitional requirements on own funds classification and the Solvency Capital Requirement which apply at the level of individual insurance or reinsurance undertakings during the transitional period as referred to in Article 308a(7) and Article 308a(8) The delegated act shall require that insurance and reinsurance undertakings ensure that eligible own funds, taking account of the transitional provisions in Article 308a(7), are available in the group. Those eligible own funds shall be at least equal to a group Solvency Capital Requirement which shall be calculated by

(d) the item shall be fully paid in, undated and absorb losses on a going-concern basis:(e) the item shall provide for the cancellation or deferral of the payment of interest or dividends in relation to that item in the event of financial stress.

reference to the calculation method of the transitional Solvency Capital Requirement referred to in Article 308a(8) or the amount of the transitional Solvency Capital Requirement;

(j) with regard to Article 254(2)), changes which relate to the information to be reported to the authorities responsible for exercising group supervision which are consequential to the requirements for supervisory reporting at the level of individual insurance or reinsurance undertakings which apply during the transitional period referred to in Article 308a(1))

(k) with regard to Article 256(1) changes which relate to the content and timing of the information which must be publicly disclosed and which are consequential to the requirements for public disclosure at the level of individual insurance or reinsurance undertakings which apply during the transitional period as referred to in Article 308a(4)."

7. Basic own-funds items that were issued prior to the date referred to in Article 309(1) and that meet the following criteria shall, for the purposes of Articles 94(2) and 230, be included in Tier 2 basic own funds for up to 10 years after the date referred to in Article 310:

(a) the item ranks after the claims of all policyholders and beneficiaries and non-subordinated creditors;

(b) the item is undated or has an original maturity of at least 5 years. The maturity date shall be deemed to be the first contractual opportunity to repay or redeem that item. The exchange or conversion of that item into another basic own-fund item of at least the same quality shall not be deemed to be a repayment or redemption. The exchange or conversion is subject to the approval of the supervisory authority;

(c) the item is only repayable or redeemable at the option of the insurance or reinsurance undertaking and may not include limited incentives to repay or redeem that item before 10 years after the issue date of that item. The repayment or redemption of that item is subject to prior supervisory approval;

(d) the item is free from encumbrances and shall not be connected with any other transaction, which when considered with

that item, could result in that item not satisfying the requirements set out in the first paragraph of Article 94(2);

(e) the item shall be fully paid in.

8. With respect to insurance and reinsurance undertakings investing in tradable securities or other financial instruments based on repackaged loans that were issued before 1 January 2011, the requirements referred to in Article 135(2)(1a) shall apply from 31 December 2014, but only in circumstances where new underlying exposures are added or substituted after 31 December 2014.

9. Third countries applying legislation which is recognised as equivalent to this Directive may apply transitional measures equivalent to those laid down in this Article.

Or. en

Amendment 279

Proposal for a directive – amending act

Article 2 – point 72

Directive 2009/138/EC

Article 309 – paragraph 1

Text proposed by the Commission

(72) *In* Article 309(1), *the first subparagraph* is replaced by the following:

"Member States shall **adopt and publish** the laws, regulations and administrative provisions necessary to comply with Articles 4, 10, 13, 18, 23, 26 to 32, 34 to 49, 51 to 55, 67, 68, 71, 72, 74 to 85, 87 to 91, 93 to 96, 98, 100 to 110, 112, 113, 115 to 126, 128, 129, **131-134, 136-142**, 144, 146, 148, 162 to 167, 172, 173, 178, 185, 190, 192, 210 to 233, **235-240**, 243 to 258, 260 to 263, 265, 266, 303 and 304 and Annexes III and IV by 31 December 2012.

Amendment

(72) Article 309(1) is replaced by the following:

"Member States shall **bring into force** the laws, regulations and administrative provisions necessary to comply with Articles 4, 10, 13, **14, 17(3)**, 18, 23, 26 to 32, 34 to 49, 51 to 55, **58(8)**, 67, 68, 71, 72, 74 to 85, 87 to 91, 93 to 96, 98, 100 to 110, 112, 113, 115 to 126, 128, 129, **131 to 134, 136 to 142, 143**, 144, 146, 148, 162 to 167, 172, 173, 178, 185, 190, 192, 210 to 233, **235 to 240**, 243 to 258, 260 to 263, 265, 266, 303 and 304 and Annexes III and IV

by 31 December 2012. ***They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.***"

Or. en

Justification

Article 14 (authorisation) should also be included + consistency with Article 311.

Amendment 280

Proposal for a directive – amending act

Article 2 – point 73

Directive 2009/138/EC

Article 310 – first paragraph

Text proposed by the Commission

(73) In Article 310, the date "1 November 2012" in the first paragraph is replaced by the date "***1 January 2013***".

Amendment

(73) In Article 310, the date "1 November 2012" in the first paragraph is replaced by the date "***1 January 2014***".

Or. en

Amendment 281

Proposal for a directive – amending act

Article 2 – point 74

Directive 2009/138/EC

Article 311 – paragraph 2

Text proposed by the Commission

Articles 1, **2**, 3, 5 to 9, 11, 12, **14** to 17, **19-22**, 24, 25, 33, 57 to 66, 69, 70, 73, **143**, 145, 147, 149 to 161, 168 to 171, 174 to 177, 179 to 184, 186 to 189, 191, 193 to 209, 267 to 300, 302, **305- to 08** and Annexes I and II, V, VI and VII shall apply

Amendment

Articles 308a and 308b shall apply from 1 January 2013.

Articles 1 **to** 3, 5 to 9, 11, 12, **15** to 17(2), **19 to 22**, 24, 25, 33, 57, **58(1) to 58(7)**, **59** to 66, 69, 70, 73, 145, 147, 149 to 161, 168 to 171, 174 to 177, 179 to 184, 186 to 189, 191, 193 to 209, 267 to 300, 302, **305 to 308** and Annexes I and II, V, VI and VII

from 1 January **2013**.

shall apply from 1 January **2014**.

Or. en

Justification

Commission should be enabled to adopt the necessary implementing measures before the application date.

Amendment 282

Proposal for a directive – amending act

Article 2 – point 76

Directive 2009/138/EC

Annex III – part A – point 29

Text proposed by the Commission

29. *in any event* and as an alternative to the forms of non-life insurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Council Regulation (EC) No 1435/2003.

Amendment

29. *to the extent that the Member State concerned allows for the legal form of a cooperative society to take up the business of non-life insurance* and as an alternative to the forms of non-life insurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Council Regulation (EC) No 1435/2003.

Or. en

Amendment 283

Proposal for a directive – amending act

Article 2 – point 78

Directive 2009/138/EC

Annex III – part B – point 29

Text proposed by the Commission

29. *in any event* and as an alternative to the forms of life insurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Regulation (EC) No 1435/2003.

Amendment

29. *to the extent that the Member State concerned allows for the legal form of a cooperative society to take up the business of life insurance* and as an alternative to the forms of life insurance undertaking listed in points (1) to (28), the form of a

European Cooperative Society (SCE) as defined in Regulation (EC) No 1435/2003.

Or. en

Amendment 284

Proposal for a directive – amending act

Article 2 – point 80

Directive 2009/138/EC

Annex III – part C – point 29

Text proposed by the Commission

29. ***in any event*** and as an alternative to the forms of reinsurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Regulation (EC) No 1435/2003."

Amendment

29. ***to the extent that the Member State concerned allows for the legal form of a cooperative society to take up the business of reinsurance*** and as an alternative to the forms of reinsurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Regulation (EC) No 1435/2003.

Or. en

Amendment 285

Proposal for a directive

Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Regulation (EC) No 1060/2009 is amended as follows:

Article 2(3) is replaced by the the following:

"3. A credit rating agency shall apply for registration under this Regulation as a condition for being recognised as an External Credit Assessment Institution (ECAI) in accordance with Article 81 of Directive 2006/48/EC or Article 109a of

Directive 2009/138/EC, unless it only issues the credit ratings referred to in paragraph 2."

Or. en

Justification

Insertion of Article 109a(1) implies amendments to the CRA Regulation with a view to establishing consistency.

Amendment 286

**Proposal for a directive – amending act
Article 2 b (new)**

Text proposed by the Commission

Amendment

Article 2b

Review

The Commission shall, by 1 January 2014, submit to the European Parliament and to the Council a report specifying whether the ESAs have submitted the draft regulatory technical standards and the draft implementing technical standards provided for in this Directive, whether the submission is mandatory or optional, with any appropriate proposals.

Or. en

Amendment 287

**Proposal for a directive – amending act
Article 3 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

Amendment

1. Member States shall ***adopt and publish*** the laws, regulations and administrative provisions necessary to comply with Article 1(1), Article 2(3), Article 2(6), Article 2(8), Article 2(9) Article 2(12),

1. Member States shall ***bring into force*** the laws, regulations and administrative provisions necessary to comply with Article 1(1), Article 2(3), Article 2(6), Article 2(8), Article 2(9) Article 2(12),

Article 2(13), Article 2(24), Article 2(25), Article 2(28), Article 2(30), Article 2(32), Article 2(33), , **Article 2(39), Article (41) to (42), Article 2(44) to 2(46), Article 2(52) to (54), Article 2(56), Article 2(58), Article 2(61) to (62), Article 2(67), Article 2(69), Article 2(70), and Article 2(71)** to 2(80) of this Directive by 31 December 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Article 2(13), Article 2(24), Article 2(25), Article 2(28), Article 2(30), Article 2(32), Article 2(33), **Article 2(37), Article 2(40) to (43), Article 2(45) to 2(47), Article 2(53) to (55), Article 2(57), Article 2(59), Article 2(62) to 2(63), Article 2(66) and Article 2(75)** to 2(80) of this Directive by 31 December 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Or. en

Amendment 288

Proposal for a directive – amending act Article 4

Text proposed by the Commission

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. Articles 2(15) **and** 2(20) shall apply from 1 January 2013.

Amendment

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. Articles 2(15), 2(20) **and 2(59a)** shall apply from 1 January 2013.

Or. en

EXPLANATORY STATEMENT

On 23 September 2009 the Commission adopted three proposals for a regulation setting up the European Supervisory Authorities in the field of banking (EBA), insurance and pensions (EIOPA) and securities and markets (ESMA). One month later, on 26 October 2009, a proposal for a so-called Omnibus Directive was adopted to align most of the sectoral Directives to the new architecture (Omnibus I).

As the new Directive on insurance and reinsurance business (Solvency II) was close to publication, it was decided to wait for that and to adopt a second Omnibus Directive (Omnibus II) shortly after publication of Solvency II aligning it to the EIOPA Regulation. Although Solvency II finally was published on 17 December 2009, the Commission adopted the Omnibus II proposal only at the beginning of 2011, 15 months after the adoption by the Commission of the Omnibus I proposal.

The rapporteur already provided a working document on 16 March 2011 setting out the main topics of the Commission proposal that was discussed at the ECON meeting of 21 March 2011.

I Alignment of the Solvency II Directive to EIOPA

1. Delegated Acts, Regulatory Technical Standards and Implementing Technical Standards

With the entering into force of the Lisbon Treaty, the comitology procedure¹ needs to be replaced by delegated acts (Art. 290 TFEU) and implementing acts (Art. 291 TFEU). Based on these articles, the ESA Regulations also introduce regulatory technical standards (RTS) and implementing technical standards (ITS).

In order to put Solvency II in line with the Lisbon Treaty, the Commission proposed to use delegated acts, often supplemented by implementing technical standards on procedural issues. The Commission proposal did not include any regulatory technical standard. Your rapporteur regrets that the Commission did not align its proposal to the adopted Omnibus I text, as regards the choice of delegated or implementing acts as well as the standard wording on regulatory and implementing technical standards. Based on Omnibus I and the ESA regulations, the rapporteur foresees a mixture of delegated and implementing acts, also providing EIOPA with a role in drafting regulatory technical standards.

2. Regulatory Procedure

The Commission did not amend the regulatory procedures in Solvency II, which are all related to equivalence decisions concerning individual third countries. These provisions need adaptation to the Lisbon Treaty too. The rapporteur suggests to replace the regulatory procedure by delegated acts to ensure parliamentary control.

3. Mediation by EIOPA

The Commission proposal introduces a binding mediation power for EIOPA, as laid down in

¹ Based on Art. 202 EC and the Comitology Decision 1999/468/EC, as amended by 2006/512/EC.

Article 19 of the EIOPA Regulation. Former non-binding CEIOPS consultation procedures are adjusted to binding mediation, new mediation procedures are added. From the rapporteur's point of view a streamlining of the procedures is necessary. The rapporteur introduces additional mediation powers for EIOPA in case the group supervisor determines equivalence for third countries.

For decisions on group level, the rapporteur proposes to recognize EIOPA's role in the college of supervisors as foreseen in the EIOPA Regulation.

With regard to decision-making procedures involving the group supervisor, Article 44 of the EIOPA Regulation provides for a modified voting procedure, once EIOPA is in a position to overrule the group supervisor's decision. The rapporteur clarifies what happens, if EIOPA's mediation decision is rejected by a blocking minority of representatives in EIOPA's Board of Supervisors.

4. IORP Directive

Solvency II contains amendments to the IORP Directive, including a possibility to adopt implementing measures in accordance with the regulatory procedure with scrutiny. From the rapporteur's point of view a Lisbonisation is necessary, as a review of the IORP Directive is, though announced by the Commission, not yet proposed.

5. Insurance Mediation Directive

The IMD Directive is expected to be revised by the Commission in 2012. The rapporteur, however, proposes to already establish a role for EIOPA in this Directive in order to point out Parliament's interests at an early stage.

II Amendments to the Solvency II Directive

1. Illiquidity Premium in Article 77a in connection with Article 86

The Commission proposal foresees the inclusion of an illiquidity premium in the risk-free interest rate term structure, when EIOPA observes a period of stressed market liquidity. The rapporteur regrets that the Commission did not specify the application of such a premium, leaving important policy choices at the level of delegated acts. From the rapporteur's point of view EIOPA should play an important role in developing a formula, which identifies the size of the illiquidity premium. The rapporteur suggests a threshold in order to avoid that very small percentages, which might represent market anomalies or measurement errors, are taken into account. EIOPA should also help in identifying substantially illiquid liabilities to further define the scope of the illiquidity premium. It should be up to the Member States to decide on the use of a premium, thus enabling them to apply a more stringent regime in the calculation of technical provisions.

In the light of the Council discussions, the Commission adapted the proposal of an illiquidity premium and replaced it by a countercyclical premium and a matching premium. The adaptation was not formally addressed to the European Parliament. The rapporteur decided to concentrate on the revision of the original Commission proposal, also taking into account that the illiquidity premium is the only premium concept that was already tested in the 5th Quantitative Impact Study.

2. Standard formula in Article 109a in connection with Article 111

The Commission proposed that EIOPA provides harmonised technical inputs to the standard formula. In the Commission's view this includes an EIOPA assessment on the eligibility of external credit assessment institutions. The rapporteur suggests clarifications to avoid an overlap with the CRA Regulation and to enhance consistency with CRD. The Joint Committee should play a leading role in order to prevent the ESAs from taking different views vis-à-vis the same external credit assessment institution.

3. Exceptional fall in financial markets in Article 138 in connection with Article 143

In the event of an exceptional fall of financial markets the recovery period for insurance and reinsurance undertakings not complying with the SCR may be prolonged. The rapporteur appreciates that the Commission now proposes a definition of exceptional fall in financial markets. Clarification should be made that EIOPA determines the exceptional fall not only at request, but also on its own initiative. The rapporteur adds a consultation procedure with the ESRB.

4. Equivalence of third-country supervisory regimes

Solvency II provides for equivalence decisions in Articles 172, 227 and 260. The Commission suggests suspending the implications of a negative equivalence decision for a period of five years.

The rapporteur defines the criteria to be fulfilled for a 5-year-period of temporary equivalence. The decision on temporary equivalence is taken by the Commission with the assistance of EIOPA. Relevant third countries should be obliged to hand in progress reports every six months. For reasons of transparency, EIOPA should publish a list of third countries which are assessed equivalent and temporary equivalent.

5. European Cooperative Society as legal form

The rapporteur agrees with a Member State-specific recognition of the European Cooperative Society.

6. Phasing-in

The rapporteur has no intention to postpone the transposition date for the Solvency II project. A smooth transition of the Solvency II requirements, however, seems to be reasonable, not only for small and medium-sized undertakings, but also for the preparedness of supervising authorities. For this reason, the rapporteur proposes a phasing-in within 2013, which already provides for approval procedures and, beginning July 2013, for important supervisory information.

7. Transitional Measures in Articles 308a and 308b

The Commission proposal foresees several transitional measures. These transitional measures are introduced by delegated acts specifying the length of the transitional period, the phasing of that period and the transitional measures, which must be fulfilled by insurance and reinsurance undertakings in the meantime.

In the rapporteur's view transitional measures should be reduced to the strictly necessary and be fully laid down in the framework directive, in order for stakeholders not "to be left in the

dark" about the full impact, which would have been the case under the Commission's proposal.

III Further alignments of the Prospectus Directive to ESMA

The rapporteur aligns the wording of the regulatory technical standards to the agreed Omnibus I text. To reduce the administrative burden, the rapporteur suggests to provide the home Member State authority with an important role in distributing the final terms to ESMA and the competent host Member State authority.

IV Conclusions

The rapporteur takes the view that almost all the points mentioned above are the result of technical adaptations to the proposal, in order to make the text complete, consistent and coherent. Further political appreciation, however, is expected for the discussions on illiquidity premium, third country equivalence, phasing-in and transitional measures.