



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 14 November 2013
(OR. en)**

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2013/0327 (COD)**

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"I" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)

Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as regards the dates of transposition and application and the date of repeal of certain Directives
- Approval of the final compromise text

1. On 2 October 2013, the Commission presented a proposal for a Directive of the European Parliament and of the Council amending Directive 2004/109/EC 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as regards the dates of transposition and application and the date of repeal of certain Directives. The Directive will be adopted under the ordinary legislative procedure with the European Parliament.
2. The Presidency has conducted negotiations with the European Parliament and the Commission with a view to reaching a first reading agreement. On 13 November 2013, a provisional agreement was reached which resulted in the final compromise text set out in the Annex. The only substantive change to the Commission proposal was to delay the date of transposition until 31 March 2015.

3. Against this background the Permanent Representatives Committee (Part 2) is invited to:
- a) approve the final compromise text, as set out in the Annex;
 - b) confirm that the Presidency can indicate to the European Parliament that, should the European Parliament adopt its position at first reading in the form as set out in the Annex, subject, if necessary, to revision by the legal linguists of both institutions, the Council would approve the European Parliament's position and the Act shall be adopted in the wording which corresponds to the European Parliament's position.
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• PE-CONS 98/13 - 2013/0327 (COD)

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1. DIRECTIVE 2013/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

1. of ...

2. amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Solvency I)

1) (Text with EEA relevance)

(1) THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure¹,

Whereas:

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

¹ Position of the European Parliament of ... (not yet published in the Official Journal) and Council decision of

² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ, L 335, 17.12.2009, p.1).

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

- (3) Directive 2012/23/EU of the European Parliament and of the Council⁴ amends Directive 2009/138/EC by postponing the date for transposition from 31 October 2012 to 30 June 2013, the date of application from 1 November 2012 to 1 January 2014 and the date of repeal of the existing insurance and reinsurance Directives⁵ (collectively referred to as 'Solvency I') from 1 November 2012 to 1 January 2014.
- (4) On 19 January 2011, the Commission adopted a proposal (the 'Omnibus II proposal') to amend, inter alia, Directive 2009/138/EC in order to take into account the new supervisory architecture for insurance, namely the setting-up of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA). The Omnibus II proposal also includes provisions to postpone the date for transposition and the date of application of Directive 2009/138/EC, and the date of repeal of Solvency I, and serves as a means to adapt Directive 2009/138/EC to the entry into force of the Treaty on the Functioning of the European Union by converting the provisions empowering the Commission to adopt implementing measures into provisions empowering the Commission to adopt delegated and implementing acts.

⁴ Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012 amending Directive 2009/138/EC as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (OJ L 249, 14.9.2012, p. 1).

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

- (5) Given the complexity of the Omnibus II proposal, there is a risk that it will not have entered into force before the date for transposition and the date of application of Directive 2009/138/EC. Leaving those dates unchanged would result in Directive 2009/138/EC being implemented before the entry into force of the transitional rules and of relevant adaptations, including further clarification of delegated and implementing act empowerments, provided for by the Omnibus II proposal.
- (6) In order to avoid overly burdensome legislative obligations for Member States under Directive 2009/138/EC and later under the new supervisory architecture envisaged by the Omnibus II proposal, it is therefore appropriate to postpone the date for transposition and the date of application of Directive 2009/138/EC, allowing supervisors and insurance and reinsurance undertakings sufficient time to prepare for the application of that new architecture.
- (7) It is evident from the chronological order of events that the postponed date for transposition and date of application of Directive 2009/138/EC should also apply to the amendments thereto which were made by Directive 2011/89/EC.
- (8) For reasons of legal certainty, the date of repeal of Solvency I should be postponed accordingly.
- (9) Given the very short period of time before the relevant dates laid down in Directive 2009/138/EC, this Directive should enter into force without delay.
- (10) Consequently, it is justified to apply the exception for urgent cases provided for in Article 4 of Protocol No 1 on the role of national parliaments in the European Union in this case as regards the transmission to national parliaments of the proposal for this Directive,

(2) HAVE ADOPTED THIS DIRECTIVE:

• *Article 1*

Directive 2009/138/EC is amended as follows:

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

• *Article 2*

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

• *Article 3*

This Directive is addressed to the Member States.

(3) Done at ,

(4) *For the European Parliament* *For the Council*
• *The President* *The President*
