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NOTE

from: General Secretariat of the Council
to: Coreper/Council

Subject: Amended Proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance : SOLVENCY II
- Progress report

Delegations will find attached a progress report submitted by the Presidency of the Working Party on Financial Services on Solvency II.

SOLVENCY II

Progress report submitted by the Presidency on a proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance.

I. INTRODUCTION

Following the progress report submitted to the Council on 4 December 2007¹, work has continued on the basis of Presidency compromise texts which covered the written procedure of the recast part of the Directive, Pillar II and Pillar III issues and starting negotiations on certain Chapters and Articles of Pillar I issues and initial Articles on group supervision.

II. WORK CONDUCTED BY THE WORKING PARTY ON FINANCIAL SERVICES IN THE FIRST SIX MONTHS OF 2008

Since 1 January 2008, the proposal has been discussed at ten meetings, the first on 14 January and the last on 19 May. The exact content of what was discussed at individual meetings can be seen in Annex 1. Before each meeting, the Member States received documentation and written replies to comments and reservations that delegations had sent in advance. The Working Party discussed approximately 140 articles in depth. Bearing in mind the principle that nothing is agreed until everything is agreed, it can be considered that discussions on most articles are closed. However, divergences on certain articles remain. The number of articles on which further substantial work is needed has been reduced to a modest number.

¹ 15538/07 SURE 40 ECOFIN 488 CODEC 1348

In addition, the Presidency has had a number of exchanges of views with the members of the ECON committee of the European Parliament in the presence of Commission representatives.

The remaining outstanding articles can be divided into those belonging to Pillar I and to group support and group supervision. There are some articles in other parts of the Directive that still need to be addressed (exclusion from scope, participations, captives, some recast articles) but the disagreements between Member States on those may not be substantial. On 7 May the Presidency presented the first draft of a compromise proposal on group support. On the same day the Chairman of the CEIOPS presented its work relating to the Directive.

The open provisions are as follows:

- **Pillar I:** Many views were expressed on Pillar I articles during the Working Party on Financial Services meetings. Questions were raised about definitions of own funds and their classification, the standard formula, internal models and other topics. Most articles are close to an agreement. The provisions regarding **participations (Art. 92), surplus funds (Art 77, 90, 96), treatment of equity risk (Art 105/5) and Minimum Capital Requirement (MCR) (Art 126, 127, 128) seem to be the key articles, but not necessarily the only ones, where the disagreements are still substantial.**

- **Group support and supervision:** This part of the Directive generates the most discussion as illustrated by several proposals to amend the Commission's proposal, which need further discussion. This is to be expected as the Commission's proposal is innovative. What has generally been accepted by the Member States is that the calculation of group capital requirements will normally be based on consolidated accounts. It has also been accepted that regional and product variation will create diversification effects that will reduce the total capital requirement calculated as the sum of the solo Solvency Capital Requirements for the group. A degree of group support would make it possible to take advantage of such diversification effects. There is disagreement, however, on whether the use of such effects should be limited and, if so, in what way. The associated problem is that of supervision. It is reasonable to have the group supervisor as the coordinator of cross-border group supervision, a task that will be facilitated by colleges and the advisory role of the CEIOPS. There are deep divisions regarding the extent to which, if at all, certain powers of the solo supervisor should be transferred to the group supervisor. Much of the difficulty may be caused by doubts regarding the legal basis of such a transfer, and about legal certainty and policyholder protection in case of financial difficulty. The key articles, but not necessarily the only ones, seem to be **authorisation to enter group support (Art 235), capital add-on (Art. 236), coverage of the Solvency Capital Requirement (SCR) (Art 237), monitoring the SCR (Art 238) and the group supervisor (Art 251, 252).**

III. CONCLUSIONS

The Working Party on Financial Services has now discussed all the articles of the Directives and compromises have been found for most of them. It is now clear which articles are the ones where a compromise must still be sought. The issue at the moment and the challenge for the future is to try to find a common understanding on open articles. The challenge will be to preserve the economic benefits of a risk-based approach and to try to create a workable solution for supervision of groups. This is quite a task, given the different legal and social traditions and different views on how to ensure policyholder protection, which is the one of the four key objectives² of the Directive.

² The general objectives of the Solvency II project are: to deepen the integration the European Union (re)insurance market; to enhance protection of policyholders and beneficiaries; to improve the international competitiveness of European Union insurers and reinsurers and; to promote better regulation.

SOLVENCY II

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WP negotiations held under SI Presidency and the Articles under negotiations (Recast articles were dealt with separately in written procedure).

Date of the WPFS	Articles under negotiations
14.1.2008	<ul style="list-style-type: none"> • Own funds (Art. 86-99 (ex 85-98))
31.1.2008	<ul style="list-style-type: none"> • SCR (Art. 100-109 (ex 99-108))
14.2.2008	<ul style="list-style-type: none"> • SCR (Art. 110-125 (ex 109-124)) • MCR (Art 126-133 (ex 125-132))
28.2.2008	<ul style="list-style-type: none"> • Undertaking in an irregular situation (Art. 134-145 (ex 133-144)) • Surplus funds (Art. 77, 90, 96) • Lloyds letter of credit and P&I clubs (Art. 96)
10.3.2008	<ul style="list-style-type: none"> • P&I clubs (Art. 96) • Recast Articles (Art 4, 13, 15, 155, 209) • Group supervision (210-217)
27.3.2008	<ul style="list-style-type: none"> • Group supervision (Art. 218-233) • Pillar I (Art. 75, 80, 92-94, 98, 102bis, 103, 104, 105/4, 107, 131, 132, Annex IV)
8.4.2008	<ul style="list-style-type: none"> • Group support (Art. 234-238)

22.4.2008	<ul style="list-style-type: none"> • Surplus funds (Art. 77, 90, 96) • Equity dampener (Art. 105/5) • MCR (Art. 127, 128) • Group support (239-247)
7.-8.5.2008	<ul style="list-style-type: none"> • CEIOPS Chairman presentation. • Supervision of insurance and reinsurance undertakings in a group (Art. 250-252, 259, 260, 263 and 266) • Consolidated proposal (Art. 4, 13, 93, 94, 105/4,127 and 209/3) • Group support – draft proposal on Art 234-247
19.5.2008	<ul style="list-style-type: none"> • Progress report • Supervision of insurance and reinsurance undertakings in a group (Art. 210, 214/6, 215/3, 229-231, 248, 250-252bis)
