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NOTE

from:	Presidency
to:	Delegations
Subject:	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 - Presidency compromise

Delegations will find below a Presidency compromise text on the above Commission proposal, to be discussed at the 19 April 2011 meeting.

With respect to the Commission's proposal, additions are underlined. Additions to the latest Presidency compromise are bolded.

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

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 Articles 50, 53, 62, and 114 thereof,

Having regard to the proposal from the Commission[1],

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the European Central Bank[3],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(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).

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1 OJ C […], […], p. […].[This should be footnote 1]
2 OJ C […], […], p. […].
3 OJ C […], […], p. […].

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

(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 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.

(4) The relevant legislation should define those areas where the ESAs are empowered to develop draft technical standards and how such standards should be adopted. The relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts.

(5) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. The only areas selected should be those in which consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.

(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.

(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 1093/2010 [EBA], of Regulation (EU) No 1095/2010 [ESMA], and of Regulation (EU) No 1094/2010 **[EIOPA]**. Implementing technical standards should be adopted in accordance with the procedure provided for in Article 15 of Regulation (EU) No 1093/2010 [EBA], of Regulation (EU) No 1095/2010 [ESMA], and of Regulation (EU) No 1094/2010 **[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.

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

(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.

(10) It should be possible for technical standards to provide for transitional measures subject to adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.

(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 1093/ 2010 [EBA], Regulation (EU) No 1095/ 2010 [ESMA] and Regulation (EU) No 1094/2010 **[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.

(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, 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.

(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.

(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)[4] 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 (EU) No 1094/2010. 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.

(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.

(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.

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4 OJ L 335, 17.12.2009 p. 1-155

(16a) In order to ensure that the same treatment is applied to all insurance and reinsurance undertakings calculating the Solvency Capital Requirements on the basis of the standard formula, or to take account of market developments, the Commission should be empowered to adopt delegated acts in relation to Solvency Capital Requirement on the basis of the standard formula.[5]

(16b) In order to address risks which are not adequately covered by a sub-module, the Commission should be empowered to adopt delegated acts in relation to quantitative limits and asset eligibility criteria for the Solvency Capital Requirement on the basis of the standard formula.[6] Those delegated acts should 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.

(16c) In order to ensure a harmonised approach to the use of internal models throughout the Community and to enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings, the Commission should be empowered to adopt delegated acts in relation to the use of internal models.[7]

(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.

[5] recital taking over initial part of Art 111(1) from 2009/138
[6] recital taking over initial part of Art 111(2) from 2009/138
[7] recital taking over initial part of Art 127 from 2009/138

(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.

(19) In order to ensure a harmonised approach under Directive 2009/138/EC in […] **declaring** 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 […] **declaring** 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.

(20) In order to ensure cross-sectoral consistency and to remove the misalignment between the interests of firms that "repackage" loans into tradable securities and other financial instruments (originators) and the interests of insurance or reinsurance undertakings that invest in such securities or instruments, the Commission should be empowered to adopt measures by means of delegated act in the context of investments in repackaged loans under Directive 2009/138/EC, specifying not only the requirements but also the consequences of breaching those requirements.

(21) In order to allow for greater convergence on procedures for supervisory approvals provided for in Directive 2009/138/EC of undertaking specific parameters, model change policies, special purpose vehicles and the setting and removal of capital add-ons, the Commission should be empowered to adopt measures by means of delegated act specifying procedure in these areas.

(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.

(23) In order to enable the European Cooperative Society, established in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)[8], to provide insurance and reinsurance services, it is necessary to extend the list of permissible legal forms of insurance and reinsurance undertakings under Directive 2009/138/EC to include the European Cooperative Society (SCE).

(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.[9]

(25) In order to better reflect the date which marks the end of the financial year for the majority of insurance undertakings (31 December) and to enable a smoother transition between the old and new regimes, the relevant transposition, repeal and application dates in Directive 2009/138/EC should be extended by two months.

(26) Certain implementing powers designed under Article 202 of the Treaty establishing the European Community (EC Treaty) should be replaced with the appropriate provisions in accordance with Article 290 TFEU.

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8 OJ L 207, 18.8.2003, p. 1.
9 OJ C 63, 18.03.2009, p. 11.

(27) The alignment of comitology procedures to the TFEU and, in particular, to Article 290 thereof, should be effected on a case-by-case basis. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU. In particular, the delegated acts should be adopted in respect of details concerning 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.

(27a) In the Declaration (No 39) on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.[10]

(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**s** 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.

[10] Corresponds to recital 25 of Omnibus 1

(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 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.

(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 **[…]**periods for the transitional provisions are to be set out in Directive 2009/138/EC, the actual time period **[…] should end on the date on which, in accordance with this Directive, the solvency regime of the third country concerned has been deemed to be equivalent to that laid down in Directive 2009/138/EC**. 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.

(30a) In accordance with point 34 of the Interinstitutional Agreement on better law-making , Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(31) Since the objectives of this Directive, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting policy holders and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive should not go beyond what is necessary in order to achieve those objectives.

(32) The Commission should, by 1 January 2014, and every three years thereafter, 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.

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/71/EC is amended as follows:

(1) In Article 5(4), the third subparagraph is replaced by the following:

"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 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."

(2) Article 11(3) is replaced by the following:

"3. In order to ensure consistent harmonisation of this Directive, ESMA shall develop draft regulatory technical standards to specify the information to be incorporated by reference.

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

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."

(3) Article 13(7) is replaced by the following:

"7. In order to ensure consistent harmonisation of this Directive, 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.

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

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."

(4) Article 14(8) is replaced by the following:

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

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

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."

(5) Article 15(7) is replaced by the following:

"7. In order to ensure consistent harmonisation of this Directive, 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.

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

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."

Article 2

Directive 2009/138/EC is amended as follows:

(1) Article 17(3) is replaced by the following:

"3. The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, relating to the extension of the list of forms set out in Annex III."

(2) Article 31 is amended as follows:

(a) Paragraph 4 is replaced by the following:

"4. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, 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."

(b) The following paragraph 5 is added:

"5. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards […] specifically with regard to the templates and structure of the disclosures referred to in paragraph 2.

The European Insurance and Occupational Pensions Authority (EIOPA) shall submit those draft implementing technical standards to the Commission by 31 December **2016**.

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. "

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

"Where a supervisory authority has informed the supervisory authorities of the host Member State of its intention to carry out an on-site verification in accordance with this Article and does not receive the necessary cooperation, or where it does not allow for participation of the supervisory authorities of the host Member State in the verification, the supervisory authorities may refer the matter to EIOPA […] in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by […] Article 19(3) of that Regulation."

(4) Article 35 is amended as follows:

(a) Paragraph 6 is replaced by the following:

"6. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, specifying the information referred to in paragraphs 1 to 4 and the deadlines for the submission of that information, with a view to ensuring to the appropriate extent convergence of supervisory reporting."

(b) The following paragraph 7 is added:

"7. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards […] specifically with regard to the templates **[…]** for the submission of information to the supervisory authorities referred to in paragraphs 1 and 2.

EIOPA shall submit those draft implementing technical standards to the Commission by **30 September** 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."

(5) Article 37 is amended as follows:

(a) paragraph 6 is replaced with the following:

"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 and the methodologies for the calculation thereof and the process of **[…]**set**ting**, calculat**ing** and remov**ing** capital add-ons."

(b) The following paragraph 7 is added:

"7. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards concerning the matters covered by those delegated acts, specifically with regard to the process of **[…]**set**ting**, calculat**ing** and remov**ing** capital add-ons referred to in the delegated acts adopted under paragraph 6.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 December **2016**.

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. "

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

"If a supervisory authority has not informed the appropriate authority of the Member State of the service provider of its intention to carry out an on-site inspection in accordance with this paragraph , or where it carries out an on-site inspection in accordance with this paragraph and does not receive the necessary cooperation , the supervisory authorities may refer the matter to EIOPA […] in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by […] Article 19(3) of that Regulation."

(7) Article 50 is replaced by the following:

"Article 50

Delegated acts

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

   (a) the elements of the systems referred to in Articles 41, 44, 46 and 47, and in particular the areas to be covered by the asset–liability management and investment policy, as referred to in Article 44(2), of insurance and reinsurance undertakings;

   (b) the functions referred to in Articles 44, 46, 47 and 48;

   (c) the requirements set out in Article 42 and the functions subject thereto;

   (d) the conditions under which outsourcing, in particular to service providers located in third countries, may be performed.

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 specify the elements of that assessment."

(8) In the third subparagraph of Article 51(2) the date "31 October 2017" is replaced by the date "31 December 2017".

(9) Article 52 is replaced by the following:

"Article 52

Information for and reports by the EIOPA

1. Without prejudice to Article 35 of Regulation (EU) No 1094/2010 Member States shall require the supervisory authorities to provide the following information to EIOPA on an annual basis:

(a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the supervisory authority during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows:

(i) for all insurance and reinsurance undertakings;

(ii) for life insurance undertakings;

(iii) for non-life insurance undertakings;

(iv) for insurance undertakings pursuing both life and non-life activities;

(v) for reinsurance undertakings;

(b) for each of the disclosures set out in point (a) of this paragraph, the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.

2. EIOPA shall publicly disclose, on an annual basis, the following information:

(a) for all Member States together, the total distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, for each of the following:

(i) all insurance and reinsurance undertakings;

(ii) life insurance undertakings;

(iii) non-life insurance undertakings;

(iv) insurance undertakings pursuing both life and non-life activities;

(v) reinsurance undertakings;

(b) for each Member State separately, the distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, covering all insurance and reinsurance undertakings in that Member State;

(c) for each of the disclosures referred to in points (a) and (b) of this paragraph, the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.

3. EIOPA shall provide the information referred to in paragraph 2 to the European Parliament, the Council and the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States."

(10) Article 56 is replaced by the following:

"Article 56

Solvency and financial condition report: delegated acts and implementing technical standards

The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, further specifying the information which must be disclosed, the deadlines for the disclosure of the information and the means by which this is to be achieved.

In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards […] specifically with regard to the templates for the public disclosure referred to in Articles 51.

EIOPA shall submit those draft implementing technical standards to the Commission by **30 September** 2012."

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.

(11) Article 58(8) is replaced by the following:

"8. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, further specifying the adjustments of the criteria set out in Article 59(1), in order to take account of future developments and to specify the requirements laid down in Articles 57 to 63."

(12) In Article 69, the second paragraph is replaced by the following:

"Such disclosure shall be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Articles 65 and Article 68(1), and information obtained by means of on-site verification referred to in Article 33, may only be disclosed with the express consent of the supervisory authority from which the information originated or the supervisory authority of the Member State in which the on-site verification was carried out."

(13) Article 71 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. Member States shall ensure that in the exercise of their duties supervisory authorities have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

(a) the supervisory authorities participate in the activities of the EIOPA;

(b) the supervisory authorities shall make every effort to comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010;

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

(b) Paragraph 3 is deleted.

(14) Article 75 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, to set out the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1."

(b) The following paragraph 3 is added:

"3. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft 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) […]to the extent that the delegated acts require the use of international accounting standards as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 or other […]valuation methods, the consistency of these accounting standards or other valuation methods with the valuation approach set out in paragraphs 1 and 2;

(ii) […]the methods and assumptions to be used where quoted market prices are either not available or where international accounting standards as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 […]are either temporarily or permanently not consistent with the valuation approach set out in paragraphs 1 and 2;

(b) determine the conditions of application of paragraph 1 as supplemented by the delegated acts referred to in paragraph 2, in relation to the […]methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1 where the delegated acts allow for the use of alternative valuation methods.

EIOPA shall submit […] to the Commission the draft implementing technical standards concerning the matters covered in:

(a) point (a) of the third paragraph of this Article by **30 September** 2012.

(b) point (b) of the third paragraph of this Article to the Commission by 31 December **2014**.

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."

(15) The following Article 77a is inserted:

Article 77a

"Technical information produced by the […] EIOPA

EIOPA shall publish technical information including the relevant risk-free interest rate term structure. If the delegated act referred to in Article 86(b) provides for illiquidity premium in the financial markets in periods of stressed liquidity, the published relevant risk-free interest rate term structure observed by EIOPA shall include information, including its size, relating to […] that . In that case EIOPA shall also carry out the observation of the illiquidity premium and the derivation of the information on a transparent, objective and reliable basis. Information for all these purposes shall be derived in a manner which is consistent with the methodologies, principles and techniques referred to in Article 86(b) and according to the detailed criteria, the calculation methods and assumptions specified in the delegated act referred to in Article 86(i) […].

The[…] information referred to in the first paragraph shall be published for each relevant currency on at least a quarterly basis […].

Insurance undertakings shall use the relevant risk-free interest rate term structure published by EIOPA in accordance with this Article when calculating technical provisions in accordance with this directive."

(16) Article 86 is replaced by the following:

"Article 86

Delegated acts and implementing [...] technical standards

The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, laying down the following:

(a) actuarial and statistical methodologies to calculate the best estimate referred to in Article 77(2);

(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);

(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;

(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;

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

(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;

(g) the methodologies to be used when calculating the counterparty default adjustment referred to in Article 81 designed to capture expected losses due to default of the counterparty;

(h) where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial and statistical methods referred to in points (a) and (d) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings including captive insurance and reinsurance undertakings;

(i) the detailed criteria for the elements of technical information, the calculation methods and assumptions […] according to which the information is to be derived by EIOPA as referred to in Article 77a.

In order to ensure uniform conditions of application of **the provisions referred to in points (a) to (h) of the first subparagraph**, EIOPA shall develop draft implementing technical standards **[…]**concerning the matters covered by those delegated acts.

EIOPA shall submit […] to the Commission the draft implementing technical standards concerning the matters covered in:

(a) points (a), (b) and (h) of the first paragraph of this Article by **30 September** 2012;

(b) points (c) to (g) of the first paragraph of this Article by 31 December **2014**.

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

(17) Article 92 is amended as follows:

(a) The title is replaced by the following:

"Article 92

Delegated acts and implementing [...] technical standards "

(b) Paragraph 1 is replaced by the following:

"1. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, specifying the following:

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

(b) the treatment of participations, within the meaning of the third subparagraph of Article 212(2), in financial and credit institutions with respect to the determination of own funds."

(c) The following paragraph 3 is added:

"3. In order to ensure uniform conditions of application of **the provisions referred to in paragraph 1**, EIOPA […] may develop draft implementing technical standards concerning the matters covered by those delegated acts specifically with regard to the **application of the criteria […]** to be followed for granting supervisory approval of ancillary own funds.

[…]

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

(18) Article 97 is replaced by the following:

"Article 97

Delegated acts and implementing [...] technical standards

1. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, laying down the following:

(a) a list of own-fund items, including those referred to in Article 96, deemed to fulfil the criteria, set out in Article 94, which contains for each own-fund item a precise description of the features which determined its classification;

(b) the methods to be used by supervisory authorities, when approving the assessment and classification of own-fund items which are not covered by the list referred to in point (a);

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

2. In order to ensure uniform conditions of application of **the provisions referred to in paragraph 1**, EIOPA shall develop draft implementing technical standards **[…]** concerning the matters covered by those delegated acts, specifically with regard to the classification methods.

EIOPA shall submit those draft implementing technical standards to the Commission by **30 September** 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."

(19) Article 99 is replaced by the following:

"Article 99

Delegated acts and implementing […] technical standards

1. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, laying down:

   (a) the quantitative limits referred to in Article 98(1) and (2);

   (b) the adjustments that should be made to reflect the lack of transferability of those own-fund items that can only be used to cover losses arising from a particular segment of liabilities or from particular risks (ring fenced funds).

2. In order to ensure uniform conditions of application of **the provisions referred to in paragraph 1(a)**, EIOPA shall develop draft implementing technical standards **[…]** concerning the matters covered by those delegated acts **[…]**.

   EIOPA shall submit those draft implementing technical standards to the Commission by **30 September** 201**6**.

   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. "

(20) The following Article 109a is inserted:

"Article 109a

Harmonised technical inputs to standard formula: role of EIOPA

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:

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

(b) **in accordance with** the information provided by the supervisory authorities of the Member States concerned, publish lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in whose jurisdiction they are established to the extent there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce the risk of default;

(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;

(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).

Insurance and reinsurance undertakings shall use the technical information published by EIOPA in the calculation of the Solvency Capital Requirement using the standard formula when taking into account risk mitigation techniques as referred to in Articles 101(5), when calculating the market risk module referred to in Article 105(5), and the counterparty default risk module referred to in 105(6).

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.

Insurance undertakings shall use the technical information published by EIOPA in accordance with this Article when calculating the health underwriting risk module referred to in Article 105(4)."

(21) Article 111 is replaced by the following:

"Article 111
Delegated acts and implementing […] technical standards "

1. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, providing for the following:

(a) a standard formula in accordance with the provisions of Articles 101 and 103 to 109;

(b) any sub-modules necessary or covering more precisely the risks which fall under the respective risk modules referred to in Article 104 as well as any subsequent updates;

(c) the methods, assumptions and standard parameters to be used when calculating each of the risk modules or sub-modules of the Basic Solvency Capital Requirement laid down in Articles 104, 105 and 304, the symmetric adjustment mechanism and the appropriate period of time, expressed in the number of months, as referred to in Article 106, and the appropriate approach for integrating the method referred to in Article 304 in the Solvency Capital Requirement as calculated in accordance with the standard formula;

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

(e) where insurance and reinsurance undertakings use risk-mitigation techniques, the methods and assumptions to be used to assess the changes in the risk profile of the undertaking concerned and to adjust the calculation of the Solvency Capital Requirement;

(f) the qualitative criteria that the risk-mitigation techniques referred to in point (e) must fulfil in order to ensure that the risk has been effectively transferred to a third party;

(g) the methods and parameters to be used when assessing the capital requirement for operational risk set out in Article 107, including the percentage referred to in Article 107(3);

(h) the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings related to ring-fenced funds;

(i) the method to be used when calculating the adjustment for the loss-absorbing capacity of technical provisions or deferred taxes, as laid down in Article 108;

(j) the subset of standard parameters in the life, non-life and health underwriting risk modules that may be replaced by undertaking-specific parameters as set out in Article 104(7);

(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;

(l) the simplified calculations provided for specific sub-modules and risk modules, as well as the criteria that insurance and reinsurance undertakings, including captive insurance and reinsurance undertakings, shall be required to fulfil in order to be entitled to use each of those simplifications, as set out in Article 109;

(m) the approach to be used with respect to related undertakings within the meaning of Article 212 in the calculation of the Solvency Capital Requirement, in particular the calculation of the equity risk sub-module referred to in Article 105(5), taking into account the likely reduction in the volatility of the value of those related undertakings arising from the strategic nature of those investments and the influence exercised by the participating undertaking on those related undertakings;

(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);

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

(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);

(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)

2. The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, laying down quantitative limits and asset eligibility criteria to address risks which are not adequately covered by a sub-module. 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.

3. In order to ensure uniform conditions of application of **the provisions referred to in paragraph 1**, EIOPA shall develop draft implementing technical standards **concerning[…]**:

(a) the matters covered by **the** delegated acts **as regards points 1(a) to (m), with the exception of points (h) and (j)**; and

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

EIOPA shall submit […] to the Commission the draft implementing technical standards in relation to paragraph 3[…] of this Article covering:

(a) the methods, assumptions and standard parameters to be used when calculating the non-life catastrophe risk sub-module referred to in Article 105(2)(b) and **the standard methods** in relation to **point (b) of the first subparagraph[…]** of this Article by **30 September** 2012;

(b) matters other than the methods, assumptions and standard parameters to be used when calculating the non-life catastrophe risk sub-module referred to in Article 105(2)(b) by 31 December **2014**.

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."

(22) Article 114 is replaced by the following:

" Article 114
Delegated acts and implementing […] technical standards

1. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, setting out the following:

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

(b) the adaptations to be made to the standards set out in Articles 120 to 125 in light of the limited scope of the application of the partial internal model;

(c) the procedures to approve major changes to an internal model and changes to the policy for changing an internal model referred to in Article 115;

(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.

In order to ensure uniform conditions of application of **the provisions referred to in the first subparagraph**, EIOPA shall develop draft implementing technical standards **[…]** concerning the matters covered by those delegated acts, specifically with regard to the procedures, adaptations and alternative techniques referred to in that paragraph .

EIOPA shall submit […] to the Commission the draft implementing technical standards covering the matters referred to in:

(a) paragraph 1(d) of this Article by **30 September** 2012;

(b) paragraph 1(b) of this Article by 31 December **2014**;

(c) paragraph 1(a) and (c) of this Article by 31 December **2016**.

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."

(23) Article 127 is replaced by following:

"Article 127

Delegated acts and implementing […] technical standards

The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, with respect to Articles 120 to 126, regarding the use of internal models throughout the Union.

In order to ensure uniform conditions of application of **the provisions referred to in the first subparagraph**, EIOPA shall develop draft implementing technical standards **[…]**concerning the matters covered by those delegated acts.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 December **2016**.

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

(24) Article 129(1)(d)(iii) is replaced by the following:

"(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,"

(25) In the second subparagraph of Article 129(3) the date "31 October 2014" is replaced by the date "31 December 2014".

(26) In Article 129(5), the date "31 October 2017" is replaced by the date "31 December 2017",

(27) Article 130 is replaced by the following:

"Article 130
Delegated acts

The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, specifying the calculation of the Minimum Capital Requirement, referred to in Articles 128 and 129."

[*(28) In the first paragraph of Article 131, the dates "31 October 2012" and "31 October 2013" are replaced by the dates "31 December 2012" and "31 December 2013 respectively".****]***

(29) Article 135 is replaced by the following:

"Article 135
Delegated acts

1. The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, specifying qualitative requirements in the following areas:

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

(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).

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

(a) the requirements that need to be met by undertakings that repackage loans into tradable securities and other financial instruments (originators) in order for an insurance or reinsurance undertaking to be allowed to invest in such securities or instruments issued after 1 January 2011, including requirements that ensure that the originator retains a net economic interest of no less than 5 %;

(b) qualitative requirements that must be met by insurance or reinsurance undertakings that invest in such securities or instruments;

(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."

(30) Article 138(4) is amended as follows:

(a) The first subparagraph shall be replaced by the following:

"In the event of an exceptional fall in financial markets, as declared 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."

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

"Without prejudice to the powers of the EIOPA under Article 18 of Regulation **(EU) No 1094/2010** […], for the purposes of this paragraph, EIOPA shall, following a request by the supervisory authority concerned,[…] declare the existence of an exceptional fall in financial markets. An exceptional fall in financial markets exists, […] where there is 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 […].

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 […]. To this end EIOPA shall […] declare, either following the request by the supervisory authority concerned or on its own initiative, […] when an exceptional fall in financial markets has ceased to exist.."

(31) Article 143 is replaced by the following:

" Article 143
Delegated acts

1. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, specifying the procedures to be followed by EIOPA when declaring 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).

2. Where it is necessary to enhance convergence, the Commission may adopt delegated acts, in accordance with Article 301a**[…]**, 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."

(31a) Article 149 is replaced by the following:

"Article 149

Changes in the nature of the risks or commitments

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 that Article and Article 148."

(32) The following subparagraph is inserted after the first subparagraph of Article 155(3):

"In addition, the supervisory authority of the host Member State may refer the matter to EIOPA […] in accordance with Article 19 of Regulation 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by […] Article 19(3) of that Regulation."

(33) The following subparagraph is inserted after the first subparagraph of Article 158(2):
"In addition, the supervisory authority of the host Member State may refer the matter to EIOPA […] in accordance with Article 19 of Regulation 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by […] Article 19(3) of that Regulation."

(34) Article 172 is amended as follows:

(a) paragraph 1 is replaced by the following:

"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."

(b) the following new paragraphs 4, 5 and 6 are added:

"4. By way of derogation from paragraph […] 2 […], the same treatment as in […] paragraph 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 **[…]** 5 years from the date referred to in the first sub-paragraph of Article 309(1) **or until the date on which, in accordance with paragraph 2 of this Article, the solvency regime of that third country has been deemed to be equivalent to that laid down in Title I, whichever is the earliest**. This derogation shall only apply where the Commission has made a decision in accordance with paragraph 6 that specified conditions have been met by the third country.

5. The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, specifying in relation to paragraph 4 **[…]** the conditions which are to be met by the third country. Those conditions shall cover commitments given by the third countries, 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.

6. The Commission may, in accordance with the […] examination procedure referred to in Article 301(2), decide in respect of solvency regimes referred to in paragraph 4 that the conditions set out in paragraph 5 and the delegated act have been met by the third country.

Those decisions shall be regularly reviewed."

(36) Article 210 (2) is replaced by the following:

"2. The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, specifying the provisions of paragraph 1 with respect to the monitoring, management and control of risks arising from finite reinsurance activities."

(37) Article 211 is amended as follows

(a) Paragraphs 2 and 3 are replaced by the following:

"2. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, laying down the following:

(a) the scope of authorisation;

(b) mandatory conditions to be included in all contracts issued;

(c) fit and proper requirements as referred to in Article 42 of the persons running the special purpose vehicle;

(d) fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;

(e) sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements;

(f) accounting, prudential and statistical information requirements;

(g) solvency requirements.

The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, 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.

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."

(b) The following paragraph 4 is added:

"4. In order to ensure uniform conditions of application of **the provisions referred to in paragraph 2**, EIOPA […] may develop draft implementing technical standards **[…]** 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.

[…]

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."

(38) Article 216(7) is replaced by the following:

"7. 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."

(39) Article 217(3) is replaced by the following:

"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."

(40) Article 227 is amended as follows

(a) In Paragraph 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."

(b) Paragraph 3 is replaced by the following:

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

(c) Paragraphs 6 to 8 are added:

"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 **[…]** 5 years from the date referred to in the first sub-paragraph of Article 309(1) **or until the date on which, in accordance with paragraph 4 of this Article, 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**. 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.

7. The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, specifying in relation to paragraph 6 **[…]** the conditions which are to be met by the third country. Those conditions shall cover commitments given by the third countries, 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.

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 7 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 […] examination procedure referred to in Article 301(2). The decisions shall be reviewed regularly."

(43) Article 231 is amended as follows:

(a) The last subparagraph of paragraph 1 is replaced by the following:

"The group supervisor shall inform EIOPA and the other supervisory authorities concerned without delay."

(b) Paragraphs (2) to (6) are replaced by the following:

"2. The group supervisor shall without delay forward the complete application to EIOPA and to the other supervisory authorities concerned and initiate discussions with a view to reaching a joint decision on the application […].

[…]The group supervisor shall provide the other supervisory authorities concerned with a document setting out its proposal within five months from the date of receipt of the **complete** application **by the group supervisor**.

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.

[…]

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

[…]

5. In the absence of a joint decision within six months from the date of receipt of the complete application by the group supervisor[…], 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;

[…]

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.

6. If, within the six months period referred to in paragraph 2[…], any of the supervisory authorities concerned refers 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.

The five month period referred to in paragraph 2 […] 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 referred to in paragraph 2[…] or after a joint decision has been reached."

(44) Article 234 is replaced by the following:

"Article 234
Delegated acts

The Commission shall adopt delegated acts in accordance with Article 301a**[…]**specifying the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233."

(45) Article 237 is amended as follows:

(a) **The last subparagraph of paragraph 1 is replaced by the following:**

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 without delay inform and forward the complete application to EIOPA and to the other supervisory authorities within the college of supervisors and initiate discussions with a view to reaching a joint decision on the application.

(aa) Paragraphs **2 to** 5 are replaced by the following:

"2. […]The group supervisor shall provide the other supervisory authorities concerned with a document setting out its proposal within two months from the date of receipt of the **complete** application **by the group supervisor**.

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.

[…]

4. The supervisory authority having authorised the subsidiary shall provide the applicant **with** the **fully reasoned** joint decision referred to in paragraph 2 […]. 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 three months from the date of receipt of the complete application by the […]supervisory authority having authorised the subsidiary […], 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."

(b) The following paragraph 6 is added:

"6. If, within the three months period referred to in paragraph 2[…], any of the supervisory authorities concerned refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor concerned 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 two month period referred to in paragraph 2 […] 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 referred to in paragraph 2[…], or after a joint decision has been reached."

(46) Article 238(5) is replaced by the following:

"5. Where the supervisory authority and the group supervisor disagree, […] the group supervisor may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA […] 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 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."

(47) **[…]**

(48) Article 241 is replaced by the following:

" Article 241
Subsidiaries of an insurance or reinsurance undertaking:
delegated acts

The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, specifying:

(a) the criteria to be applied when assessing whether the conditions stated in Article 236 are satisfied;

(b) the criteria to be applied when assessing what should be considered an emergency situation under Article 239(2);

(c) the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 237 to 240."

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

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

(a) In paragraph 1 the date "31 October 2015" is replaced by the date "31 December 2015".

(b) The following paragraph 3 is added:

"3. No later than 3 years after the date referred to in the first sub-paragraph of Article 309(1) of Directive 2009/138/EC, the Commission shall review the requirements laid down with respect to the calculation of group solvency, in accordance with Article 233, of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking."

(51) Article 244 (4) is replaced by the following:

"4. The Commission may adopt delegated acts in accordance with Article 301a**[…]** 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."

(52) Article 245 (4) is replaced by the following:

"4. The Commission may adopt delegated acts in accordance with Article 301a**[…]** 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."

(53) In Article 247 paragraphs (4) to (7) are replaced by the following:

[…]

5. […]The joint decision shall state the full reasons[…].

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 period set out in paragraph 3 […]of this Article any of the supervisory authorities concerned have referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, they shall await the decision […] that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take their final decision in conformity with EIOPA's decision.

The periods referred to in paragraphs 3 […] 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.

7. EIOPA shall inform the European Parliament, the Council and the Commission of any major difficulties with the application of paragraphs 2, 3 and 6 on at least an annual basis.

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**[…]**, specifying those criteria."

(54) Article 248 is amended as follows:

(a) The following subparagraph is added to paragraph 2:

"Where the group supervisor fails to carry out the tasks referred to in paragraph 1 or where the members of the college do not cooperate to the extent required in this paragraph, any of the supervisory authorities concerned may refer the matter to EIOPA […] in accordance with Article 19 of Regulation 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by Article 19(3) of that Regulation."

(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 in accordance with Article 19 of Regulation 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by Article 19(3) of that Regulation.

[…] The group supervisor shall […] take its final decision in conformity with EIOPA's decision. […] The group supervisor shall transmit the decision to the other supervisory authorities concerned."

(c) Paragraphs 6 and 7 are replaced by the following:

"6. In order to ensure uniform conditions of application of this Article, EIOPA […] may develop draft implementing technical standards concerning the operational functioning of colleges.

[…]

EIOPA shall review the operational functioning of colleges every three years and, if necessary, develop draft implementing technical standards or review the implementing technical standards referred to in the third subparagraph.

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

7. The Commission shall adopt delegated acts in accordance with Article 301a**[…]** for the coordination of group supervision for the purposes of paragraphs 1 to 6, including the definition of "significant branch".

(55) In Article 249 is amended as follows:

(a) the following paragraph 1a is inserted:

"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 in accordance with Article 19 of Regulation 1094/2010[…].

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(3) of Regulation (EU) No 1094/2010."

(b) Paragraph 3 is replaced by the following:

"3. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, 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**[…]**, specifying the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting."

(c) The following paragraph 4 is added:

"4. In order to ensure uniform conditions of application of this Article, EIOPA […] shall develop draft implementing technical standards **[…]** 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.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 December 2014.
[…]

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."

(57) In Article 254(2), the first subparagraph 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 the nature of the undertaking concerned. Articles 35 and 308a(1) shall apply *mutatis mutandis*."

(58) In Article 255(2), the following fourth subparagraph is added:

"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 […] in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by […] Article 19(3) of that Regulation."

(59) Article 256 is amended as follows:

(a) Paragraph 1 is replaced by the following:

" 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*."

(b) Paragraph 4 is replaced by the following:

"4. The Commission shall adopt delegated acts, in accordance with Article 301a**[…]**, further specifying the information which must be disclosed, the deadlines for the disclosure of the information and the means by which this is to be achieved as regards the single solvency and financial condition report."

(c) The following paragraph 5 is added:

"5. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards specifically with regard to the templates 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 Commission by **30 September** 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."

(60) Article 258 (3) is replaced by the following:

"The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, for the coordination of enforcement measures referred to in paragraphs 1 and 2."

(61) Article 259 is replaced by the following:

" Article 259
Reporting of EIOPA

1. EIOPA shall report to the European Parliament annually in accordance with Article 50 of Regulation (EU) No 1094/2010.

2. EIOPA shall report, inter alia, on all relevant and significant experiences of the supervisory activities and cooperation between supervisors in the framework of Title III, and, in particular:

   (a) the process of the nomination of the group supervisor, the number of group supervisors and geographical spread;

   (b) the working of the college of supervisors, in particular the involvement and commitment of supervisory authorities where they are not the group supervisor.

3. EIOPA may, for the purposes of paragraph 1 of this Article, also report on the main lessons drawn from the reviews referred to in Article 248(6), where appropriate."

(62) Article 260 is amended as follows:

(a) In paragraph 1, the second subparagraph is replaced by the following:

"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 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."

(b) Paragraph 2 is replaced by the following:

"2. The Commission may adopt delegated acts, in accordance with Article 301a**[…]**, 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.

(c) **[…]**

(63) In Article 262 the first subparagraph of paragraph 1 is replaced by the following:

"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:

(64) In Article 262 points (a) and (b) of paragraph 1 are replaced by the following:

(a) Articles 218 to 235, Article 244 to 258 and Article 308a(9) *mutatis mutandis*
(b) one of the methods set out in paragraph 2."

(66) In the first paragraph of Article 300, the date "31 October 2012" is replaced by the date "31 December 2012".

(67) Article 301 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. Where reference is made to this paragraph, Articles 5 and **10** of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article[…] **11** thereof."

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third paragraph of Article 5(4) of that Regulation shall apply.

(b) Paragraph (3) is deleted.

(68) The following articles 301a, 301b and 301c are inserted:

"Article 301a

Exercise of the delegation

1. **The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.**

2. 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 **[…]**and 308b shall be conferred on the Commission for a period of 5 years **from …***.

The Commission shall draw up a report in respect of the delegat**ion of** power **not later than 9** months before the end of the 5 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**.

3. 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 **[…]**and 308b may be revoked at any time by the European Parliament or by the Council.

. **A** decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect **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.

*** Date of entry into force of this Directive.**

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to 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 and 308b shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 3 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 3 months at the initiative of the European Parliament or the Council.

[…]

(69) In Article 304(2), the date "31 October 2015" is replaced by the date "31 December 2015".

[(70) The following Article 308a is inserted:

"SECTION 3

Transitional measures specified by delegated acts

Article 308a

Transitional provisions

1. Where the Commission has adopted a delegated act in accordance with Article 308b(a), Article 35(5) shall not apply for a maximum period of three years from the date referred to in the first sub-paragraph of Article 309(1).

2. Where the Commission has adopted a delegated act in accordance with Article 308b(b), 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).

3. Where the Commission has adopted a delegated act in accordance with Article 308b(c), Article 41(1) and Article 41(3) shall not apply for a maximum period of 3 years from the date referred to in the first sub-paragraph of Article 309(1).

4. Where the Commission has adopted a delegated act in accordance with Article 308b(d), 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).

5. Where the Commission has adopted a delegated act in accordance with Article 308b(e), 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(f), 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(g), 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(h), 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(i), 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) .

(71) The following Article 308b is inserted:

"Article 308b
Delegated Acts

The Commission may adopt delegated acts, in accordance with Article 301a **[…]**, *regarding the following :*

(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;

(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 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 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 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)."

(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, 14, 18, 23, 26 to 32, 34to 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.

Member States shall apply those provisions from 1 January 2013."

(73) In Article 310, the date "1 November 2012" in the first paragraph is replaced by the date "1 January 2013".

(74) The second paragraph of Article 311 is replaced by the following:

"Articles 1, 2, 3, 5 to 9, 11, 12, 15 to 17, 19-22, 24, 25, 33, 56 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 308 and Annexes I and II, V, VI and VII shall apply from 1 January 2013."

(75) In Annex III, part A, point 28 is replaced by the following:

"28. in any event and as an alternative to the forms of non-life insurance undertaking listed in points (1) to (27) and (29), the form of a European Company (SE) as defined in Council Regulation (EC) No 2157/2001([1])"

(76) In Annex III, part A, the following point 29 is added:

"29. […] to the extent that Member States allow for the legal form of a cooperative society to take up the business of non-life insurance,[…] 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(*)."

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* OJ L 207, 18.8.2003, p. 1.

(77) In Annex III, part B, point 28 is replaced by the following:

"28. in any event and as an alternative to the forms of life insurance undertaking listed in points (1) to (27) and (29), the form of a European Company (SE) as defined in Regulation (EC) No 2157/2001"

(78) In Annex III, part B, point 29 is added:

"29. […] to the extent that Member States allow for the legal form of a cooperative society to take up the business of life insurance,[…] 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."

(79) In Annex III, part C, point 28 is replaced by the following:

"28. in any event and as an alternative to the forms of reinsurance undertaking listed in points (1) to (27) and (29), the form of a European Company (SE) as defined in Regulation (EC) No 2157/2001"

(80) In Annex III, part C, point 29 is added:

"29. […] to the extent that Member States allow for the legal form of a cooperative society to take up the business of reinsurance,[…] 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."

(81) The correlation table in Annex VII is amended as follows:

(a) Under "This Directive", Article 13(27) is inserted as corresponding to Article 5, point (d) of directive 73/239/EEC.

(b) Under "This Directive", the references to Article 210(1)(f) and Article 210(1) (g) shall be replaced respectively with references to Article 212(1) (f) and Article 212(1)(g).

[Article 3

Transposition

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), 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 apply those provisions from 1 January 2013.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on 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.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*	
The President	*The*	*President*
[…]	*[…]*	