EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives
COMMON GUIDELINES
Consultation deadline for Croatia: 4.9.2012

DIRECTIVE 2012/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure[1],

[1] Position of the European Parliament of 3 July 2012 (not yet published in the Official Journal) and decision of the Council of ....

Whereas:

(1) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II)[1], provides a modern, risk-based system for the regulation and supervision of insurance and reinsurance undertakings of the Union. That system is essential in order to ensure a safe and solid insurance sector that can provide sustainable insurance products and support the real economy by encouraging long-term investments and additional stability.

[1] OJ L 335, 17.12.2009, p. 1.

(2) Directive 2009/138/EC sets 31 October 2012 as the date for transposition and 1 November 2012 as the date of application. Furthermore, that Directive sets 1 November 2012 as the date of repeal of the existing insurance and reinsurance Directives[1] (collectively referred to as "Solvency I").

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

(3) On 19 January 2011 the Commission adopted a proposal to amend, inter alia, Directive 2009/138/EC in order to take into account the new supervisory architecture for insurance, namely the setting-up of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (the "Omnibus II proposal"). The Omnibus II proposal also includes provisions to postpone the date for transposition and the date of application of Directive 2009/138/EC, and the date of repeal of Solvency I.

(4) Given the complexity of the Omnibus II proposal, there is a risk that it will not have entered into force before the date for transposition and the date of application of Directive 2009/138/EC. Leaving those dates unchanged would result in Directive 2009/138/EC being implemented before the entry into force of the transitional rules and relevant adaptations provided for by the Omnibus II proposal.

(5) In order to avoid overly burdensome legislative obligations for Member States under Directive 2009/138/EC and later under the new architecture envisaged by the Omnibus II proposal, it is therefore appropriate to postpone the date for transposition of Directive 2009/138/EC.

(6) In order to allow for supervisors and insurance and reinsurance undertakings to prepare for the application of the new supervisory architecture, it is also appropriate to provide for a later date of application of Directive 2009/138/EC.

(7) For reasons of legal certainty, the date of repeal of Solvency I should be postponed accordingly.

(8) Given the short period of time before the dates laid down in Directive 2009/138/EC, this Directive should enter into force without delay,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2009/138/EC is hereby amended as follows:

(1) Article 309(1) is amended as follows:

(a) in the first subparagraph, the date "31 October 2012" is replaced by that of "30 June 2013";

(b) after the first subparagraph, the following subparagraph is inserted:

"The laws, regulations and administrative provisions referred to in the first subparagraph shall apply from 1 January 2014.";

(2) in the first paragraph of Article 310, the date "1 November 2012" is replaced by that of "1 January 2014";

(3) in the second paragraph of Article 311, the date "1 November 2012" is replaced by that of "1 January 2014".

Article 2

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

Article 3

This Directive is addressed to the Member States.

Done ...,

For the European Parliament	*For the Council*
The President	*The President*