



EUROPEAN COMMISSION

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2012/0110 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as regards the dates of its transposition and application and the date of repeal of certain Directives**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Grounds for and objectives of the proposal**

Directive 2009/138/EC (Solvency II) provides a modern, risk-based system for the regulation and supervision of European insurance and reinsurance undertakings. These new rules are essential in order to ensure a safe and solid insurance sector that can provide sustainable insurance products and support the real economy through long-term investments and additional stability.

The deadline for transposition of Directive 2009/138/EC is 31 October 2012. The existing insurance and reinsurance directives (Directives 64/225/EEC, 73/239/EEC, 73/240/EEC, 76/580/EEC, 78/473/EEC, 84/641/EEC, 87/344/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC and 2005/68/EC, as amended by the acts listed in Part A of Annex VI) that are collectively referred to as Solvency I will be repealed with effect from 1 November 2012.

On 19 January 2011 the Commission adopted a proposal to amend Directive 2009/138/EC in order to take into account the new supervisory architecture for insurance and namely the setting-up of the European Insurance and Occupational Pensions Authority (EIOPA) on 1 January 2011 (COM (2011) 8, COD 2011/0006)(Omnibus II). The proposal also included provisions to extend the transposition, repeal and application dates in Directive 2009/138/EC. These rules are essential in order to ensure a smooth transition to the new regime. In addition and in order to become fully operational, the Solvency II-regime also requires a high number of delegated and implementing acts by the Commission, providing important details on different technical matters. Many of these so-called "level 2"-rules are closely linked to the Omnibus II-Directive and cannot be presented by the Commission before the publication of Omnibus II.

At the current stage, there is a risk that the proposed Omnibus II Directive will not be published and will not have entered into force before the deadline for transposition of Directive 2009/138/EC expires at 31 October 2012. Leaving this date unchanged would imply that the Framework Directive would need to be implemented without the transitional rules and other important adaptations foreseen in Omnibus II. In order to avoid this situation and ensure the legal continuity of the current Solvency provisions (Solvency I) until the complete Solvency II-package is in place, it is proposed that the relevant transposition date in Directive 2009/138/EC is extended to 30 June 2013.

It is important to allow supervisors and (re)insurance undertakings some time to prepare for the application of Solvency II. It is therefore proposed to set the date for first application of Solvency II at 1 January 2014. This will make it possible to timely start the supervisory approval procedures e.g. for internal models and undertaking specific parameters.

The date of repeal of Solvency I should be amended accordingly.

In view of the above and given the very short period of time left before the time limit of 31 October 2012, this Directive should be adopted by the European Parliament and the Council as a matter of urgency and enter into force without delay.

This Directive is necessary in order to prevent a legal vacuum to arise after 31 October 2012.

A gap would exist between the EU legal system (Solvency II) and that of Member States (where Solvency I as transposed would remain in force). This would lead to legal uncertainty for supervisors, undertakings and Member States.

## **1.2. Directive 2009/138/EC (Solvency II)**

This Directive establishes a new and modern solvency regime for insurers and reinsurers in the European Union. It provides for an economic risk-based approach which provides incentives for insurance and reinsurance undertakings to properly measure and manage their risks.

## **1.3. Proposal COM (2011) 8 (the Omnibus II Directive)**

This proposal aims to amend Directive 2009/138/EC in order to adapt Solvency II to the new supervisory architecture for insurance and namely the setting-up of the European Insurance and Occupational Pensions Authority (EIOPA) on 1 January 2011 (COM (2011) 8, COD 2011/0006). It proposes to postpone the transposition deadline of Solvency II to 31 December 2012.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **2.1. Transmission of this proposal to the national parliaments**

Draft legislative acts, including proposals from the Commission, sent to the European Parliament and to the Council must be forwarded to national parliaments in accordance with the Protocol (No 1) on the role of national Parliaments in the European Union, annexed to the Treaties.

According to Article 4 of the Protocol, an eight-week period must elapse between a draft legislative act being made available to national parliaments and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure.

However, exceptions are possible under Article 4 in cases of urgency, the reasons for which must be stated in the act or position of the Council. The adoption of this proposal by the European Parliament and the Council has to be considered as a case of absolute urgency for the reasons explained above.

### **2.2. Impact assessment**

This proposal is not accompanied by a separate Impact Assessment as an impact assessment for the Solvency II Directive has already been undertaken and this

proposal only aims at avoiding a situation of legal vacuum to arise because of the late publication of Omnibus II in the Official Journal of the European Union.

Doing nothing at this stage would create a very uncertain legal situation after 31 October 2012. A gap would exist between the EU legal system (Solvency II) and that of Member States (where Solvency I as transposed would remain in force). This would lead to legal uncertainty for supervisors, undertakings and Member States.

Furthermore the Framework Directive would need to be implemented without the transitional rules and other important adaptations foreseen in Omnibus II.

The proposed amendment affects only the obligation on Member States to transpose the Directive by 31 October 2012, extending it to 30 June 2013. It also foresees a date of first application of 1 January 2014. It does not alter the substance of the Directive in question and does not therefore impose any additional obligations on businesses.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Summary of the proposed measures**

The proposal amends Article 309(1) of Directive 2009/138/EC by postponing the date of transposition to 30 June 2013 and setting-up a later date for its application (1 January 2014). It also amends Articles 310 and 311 accordingly by setting-up a new date for the repeal of Solvency I (1 January 2014).

#### **3.2. Legal basis**

Articles 53 (1) and 62 of the Treaty on the Functioning of the European Union.

#### **3.3. Subsidiarity principle**

The subsidiarity principle applies as the proposal concerns a field which does not fall within the exclusive competence of the European Union.

The objectives of the proposal cannot be achieved sufficiently by the Member States, as the provisions of directives cannot be amended or repealed at national level.

The objectives of the proposal can be achieved only by EU action, as this proposal amends an act of EU law which is in force, and this is something which cannot be done by the Member States themselves.

The principle of subsidiarity is complied with in that the proposal amends existing EU legislation.

#### **3.4. Proportionality principle**

The proposal complies with the proportionality principle for the following reason.

It does not alter the substance of the current EU legislation: it is restricted to postponing the date for the transposition of Directive 2009/138/EC until 30 June 2013; in order to avoid a situation of legal uncertainty after the current deadline for

transposition (31 October 2012) has expired. It also provides for a new, later application date for Solvency II and consequent repeal of Solvency I (1 January 2014).

### **3.5. Choice of instruments**

Proposed instrument(s): directive.

No other instrument would have been suitable. As this is an amended directive, the only way forward is to adopt another directive.

## **4. BUDGETARY IMPLICATION**

The proposal has no implication for the EU budget.

## **5. OPTIONAL ELEMENTS**

- Simplification

The new proposal as such contains no simplification elements. It is aimed solely at postponing the date for transposition of Directive 2009/138/EC to 30 June 2013 and providing for a new application date of 1 January 2014.

- **Repeal of existing legislation**

The adoption of the proposal will not in itself entail the repeal of existing legislation; it merely adjusts the date of the repeal already foreseen in Directive 2009/138/EC.

- **European Economic Area**

This draft instrument is concerned with a subject covered by the EEA Agreement and must therefore be extended to cover the European Economic Area.

- **Detailed explanation of the proposal by chapter or by article**

This proposal postpones the date of transposition of Directive 2009/138/EC to 30 June 2013.

Article 1 of the proposal amends Article 309(1) 'Transposition' of Directive 2009/138/EC accordingly. It also provides for a new, later date of application of Solvency II (1 January 2014).

Article 2 amends the date of repeal of Solvency I (from 1 January 2014) in Article 310 and provides for the same date as date of application of the provisions of Solvency I re-casted by Solvency II in Article 311.

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(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,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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)<sup>3</sup> provides a modern, risk-based system for the regulation and supervision of European insurance and reinsurance undertakings. These new rules are essential in order to ensure a safe and solid insurance sector that can provide sustainable insurance products and support the real economy through long-term investments and additional stability.
- (2) Directive 2009/138/EC sets 31 October 2012 as the the date for transposition and 1 November 2012 as the date of repeal of . the existing insurance and reinsurance Directives (Directives 64/225/EEC<sup>4</sup>, 73/239/EEC<sup>5</sup>, 73/240/EEC<sup>6</sup>, 76/580/EEC<sup>7</sup>,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ, L 335, 17.12.2009, p.1.

<sup>4</sup> OJ, 56, 4.4.1964, p. 878.

<sup>5</sup> OJ, L 228, 16.8.1973, p.3.

<sup>6</sup> OJ, L 228, 16.8.1973, p. 20.

<sup>7</sup> OJ, L 189, 13.7.1976, p. 13.

78/473/EEC<sup>8</sup>, 84/641/EEC<sup>9</sup>, 87/344/EEC<sup>10</sup>, 88/357/EEC<sup>11</sup>, 92/49/EEC<sup>12</sup>, 98/78/EC<sup>13</sup>, 2001/17/EC<sup>14</sup>, 2002/83/EC<sup>15</sup> and 2005/68/EC<sup>16</sup>.

- (3) On 19 January 2011 the Commission adopted a proposal to amend Directive 2009/138/EC<sup>17</sup> in order to take into account the new supervisory architecture for insurance and namely the setting-up of the European Insurance and Occupational Pensions Authority (EIOPA). (Omnibus II). That proposal also included provisions to extend the transposition, repeal and application dates set out in Directive 2009/138/EC.
- (4) Given the complexity of the "Omnibus II" proposal, there is a risk that it will not have entered into force before the relevant dates set out in Directive 2009/138/EC. Leaving those dates unchanged would result in Directive 2009/138/EC to be implemented without the important adaptations provided in "Omnibus II" being put in place.
- (5) In order to avoid overly burdensome legislative obligations for Member States under Directive 2009/138/EC and later on under the new architecture envisaged by the "Omnibus II" proposal, it is appropriate to extend the transposition deadline for Directive 2009/138/EC.
- (6) In order to allow for supervisors and insurance and reinsurance undertakings to prepare for the application of the new architecture as a whole, a later date of application, namely 1 January 2014, should be foreseen.
- (7) In order to avoid a legal vacuum, the date of repeal of the existing insurance Directives should therefore be aligned accordingly.
- (8) Given the very short period of time left before the expiry of the deadlines laid down in Directive 2009/138/EC, this Directive should enter into force without delay.
- (9) Consequently, it is also justified to apply the exception for urgent cases provided for in Article 4 of Protocol (No 1) on the role of national Parliaments in the European Union in this case as regards the transmission to national Parliaments of the proposal for this Directive,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 2009/138/EC is amended as follows:

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

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<sup>8</sup> OJ, L 151, 7.6.1978, p.25.  
<sup>9</sup> OJ, L339, 27.12.1984, p. 21.  
<sup>10</sup> OJ, L 185, 4.7.1987, p. 77.  
<sup>11</sup> OJ, L 172, 4.7.1988, p. 1.  
<sup>12</sup> OJ, L 228, 11.8.1992, p. 1.  
<sup>13</sup> OJ, L 330, 5.12.1998, p. 1.  
<sup>14</sup> OJ, L 110, 20.4.2001, p. 28.  
<sup>15</sup> OJ, L 345, 19.12.2002, p. 1.  
<sup>16</sup> OJ L 323, 9.12.2005, p. 1.  
<sup>17</sup> (COM (2011) 8, COD 2011/0006)

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

(b) the following second subparagraph is inserted:

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

2. In Article 310, the date "1 November 2012" is replaced by "1 January 2014".

3. In Article 311, the date "1 November 2012" is replaced by "1 January 2014".

#### *Article 2*

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

#### *Article 3*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*