Opinion of the European Economic and Social Committee on the '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'

COM(2011) 8 final — 2011/0006 (COD)

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On 3 February 2011, the European Parliament and, on 2 March 2011, the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

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

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The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 111 votes to one with four abstentions.

1. **Conclusions and recommendations**

1.1 The EESC **warmly welcomes the European Commission's Proposal** for a Directive amending Directives 2003/71/EC and 2009/138/EC. It supports the Commission's efforts to change sectoral legislation to enable the European System of Financial Supervision (ESFS) to work effectively. The Committee reiterates its firm support for the new supervisory rules for insurance ('Solvency II') in particular in view of the experiences of the recent financial crisis.

1.2 However, the quest for sound solvency standards **should take into account the need to ensure the capacity of the insurance markets** to bear their customer's risks and carry out their role as providers of financing for communities and undertakings of all sizes.

1.3 The EESC welcomes the further amendment of the Solvency II Directive in respect of **transitional rules** in addition to the two-month extension to the implementation date.

1.4 The EESC underlines the need for the principle of a transition from the current system (Solvency I) to the new system (Solvency II). There should be **a smooth transition to the new regime**. Market disruption should be avoided by an approach which links supervisory measures to transitional rules in a consistent manner. Solvency II should not result in market consolidation, especially in respect of small and medium insurers.

1.5 The transitional measures as set out in the current proposal should allow a **phasing in/phasing out process** which takes into account the capacity of the firms to realise the changes. The duration of the transition set as a maximum could be shortened by the Commission if and when there is consistent evidence that would permit this. It is obvious that transitional periods will differ in respect of different areas.

1.6 The implementation **schedule should realistically reflect the capacity of both supervisors and insurance undertakings**, including smaller-size companies, to reach the objectives set by the Solvency II directive. The EESC urges the Commission and EIOPA to ensure that the new regime does not lead to any administrative overload and that it is not of an unmanageable complexity, which could have a negative impact on the quality of the service delivered to consumers.

1.7 The EESC endorses the **democratic legitimisation of the future European set of rules** ('single rulebook') for insurers. The definition of an appropriate scope of technical standards should also be considered as an additional tool for supervisory convergence and with a view to developing a single rule book.

1.8 The EESC feels that a clear **distinction** should be made between, on the one hand, **purely technical issues and**, on the other, issues that are **political** and a matter for Community institutions that have a political mandate.

1.9 However, the EESC stresses the status of **EIOPA** as an **autonomous body**. In its task of contributing to the establishment of a single rule book, EIOPA acts within the mandates as set by the legislative institutions with a political responsibility.

1.10 The EESC believes that the insurance industry should continue to offer consumers **guaranteed long term pensions** and should remain a reliable partner for their old-age provision. Therefore, an appropriate interest rate term structure is indispensable for the calculation of the solvency capital. The EESC advocates a solution that enables to ensure that such products remain economically viable.

1.11 The EESC further recommends that the methods used with regard to such calculations should not be seen as a technical issue alone, but should be defined under the supervision of the Parliament and the Council, **reflecting the political implications** which the setting of such methods may have for the overall level of preparedness of citizens regarding increasing life expectancy and the low replacement rate by younger generations.

1.12 The EESC underlines the importance of **continuously consulting the EIOPA Stakeholder Groups** which include representatives of industry trade unions, consumers of financial services as well as academics in the field of regulation and supervision.

2. **Context and general observations**

2.1 On 19 January 2011, the Commission adopted a proposal for a directive aimed at amending two earlier Directives dealing with activities in the financial services sector, the Prospectus directive and the Solvency II Directive. The proposal is called 'Omnibus II-Directive', because it is the second directive grouping together various amendments to existing directives in order to adapt it to the new European structure for financial supervision.

2.2 The Solvency II Directive covers the taking-up and pursuit of the business of insurance and reinsurance. The thoroughly prepared reform of European insurance supervision aims to sustainably strengthen the insurance industry and make it more competitive: capital requirements for insurers will be much more risk-based (Pillar I). Requirements for qualitative risk management (Pillar II) and reporting by insurers (Pillar III) will also be modernised.

2.3 The Omnibus II Directive aims to adapt European supervisory arrangements, following the conclusions of the high-level group chaired by Mr Jacques de Larosière and the Commission Communication of May 2009, which proposed establishing a European System of Financial Supervisors (ESFS), consisting of a network of national supervision bodies working in tandem with the new European Supervisory Authorities (ESAs).

2.4 The EESC adopted opinions (inter alia EESC 100/2010 and 446/2010) on the new supervision architecture, expressed broad support for the reforms and emphasised the distinction that was to be made between technical issues and political questions, which were seen as a matter for Community institutions that have a political mandate. The opinions of the EESC stressed the need for the new authorities to maintain a dialogue with the representative bodies of the financial services industries, the trade unions, the consumers of financial services and similarly with the EESC as the representative of organised civil society in Europe.

2.5 The EESC expressed its general support for the Commission's work in providing the newly established Authorities with powers enabling them to set technical standards and to resolve the differences between national supervision bodies, which the current proposal intends to do in the field of securities and insurance and occupational pensions.

2.6 The EESC commends the overarching objectives of the Directive, namely to protect all customers of financial services and to ensure the stability of the markets through a flexible approach, its commitment to the principles of necessity and proportionality in progressing towards supervisory convergence as well as the development of a single rule book. These objectives can contribute to the process of making the Single Market more of a reality and to keeping Europe at the forefront of international standards, without losing touch with international financial services markets.

2.7 Omnibus II primarily amends the Solvency II directive, providing for new powers for binding technical standards and aligning the procedures for implementing measures with the Lisbon Treaty. The proposal includes general amendments which are common to most sectoral legislation in the financial sector as included by the 'Omnibus-I-Directive' and necessary for the directives to operate in the context of the new authorities, for example, renaming CEIOPS as 'EIOPA' and ensuring that appropriate gateways are available for the exchange of information.

2.8 It also adjusts the existing regime of implementing powers ('Level-2') to the Lisbon Treaty. The Solvency II Directive entered into force before the new Treaty. Therefore, the transformation of existing Level 2-Mandates into mandates for delegated acts, for implementing measures or for regulatory technical standards is necessary. Appropriate control procedures should be foreseen.

2.9 Transitional arrangements are introduced in the Solvency II Directive as well. This is necessary to allow a smooth transition to the new regime. Market disruption should be avoided, and it should also be possible to take account of the impact on the range of important insurance products.

3. **Amendments to the Solvency II Directive**

3.1 In its opinion on the Solvency II Directive (EESC 976/2008), the EESC **welcomed the fundamental endeavours made to strengthen the insurance industry** and to make it more competitive, through better capital allocation, better risk management and better reporting. In this regard, in the view of the EESC, Solvency II also represents the right response in light of the experiences of the recent financial crisis. It supports the Commission in its approach of not making any fundamental changes to the Solvency II Directive However, in cases where the adjustment of implementing measures appears inappropriate, more changes may be necessary in specific areas which are limited in scope.

3.2 Over time, as the crisis caused by trading in credit derivatives raised concerns about the soundness of all financial activities, a number of fears arose that the fine-tuning of the solvency standards applicable to insurance activities would be affected by assumptions inspired by a bias towards extreme risk avoidance. The EESC acknowledges the statements made by the Commission to confirm its commitment to a balanced view regarding these standards. It calls on the Commission to **avoid creating volatility problems** in an industry where long term commitments are the rule.

3.3 Several rounds of quantitative impact studies have taken place since the launch of the Solvency II reform process, with the most recent, known as QIS 5, involving about two thirds of the European insurance market. The results were recently published by the EIOPA and require further in-depth analysis. Through the impact studies that have been carried out, it has however become clear that the timing and scope of the migration towards the new regime might have **severe consequences for the availability and affordability of insurance** for communities, businesses and private households, as well as for the operating conditions of insurance undertakings.

3.4 The Committee reiterates its previous support for the principles of proportionality and flexibility. It insisted that this should lead to clear and adequate requirements, while the diversity of the insurance market, in terms of both the size and the nature of insurance undertakings, would justify due consideration. At the current stage, the EESC is concerned that implementing Solvency II will bring about a degree of **complexity which small and medium sized insurance companies will be unable to cope with**.

3.5 An appropriate design of the Solvency II transitional rules and of the EU financial supervision is essential for ensuring the **stability of the insurance markets**. These objectives will be put at risk if the course is not set now in the right direction.

Delay to 1 January 2013

3.6 The EESC **approves of the two month extension** to the implementation date of Solvency II, which will now come into force on 1 January 2013.

3.7 The EESC agrees with the Commission that it is better to **begin the new Solvency II** regime with its new calculation, reporting and other requirements **at what is the normal beginning of the financial year** for the majority of insurance undertakings (1 January) rather than to start Solvency II during the course of the financial year, as suggested in the Solvency II Directive (1 November). Consequently, the other dates in the Solvency II Directive, especially in respect of the transitional rules and review clause, need to be extended by two months as well, as provided for in Omnibus 2.

Transitional Regime

3.8 The Commission's proposal answers the call to make the **transition** between the upgraded Solvency I standards and the Solvency II standards **smoother**, to **avoid market disruption.** Groups with activities both within and outside the EU should be able to manage the development of their business more effectively.

3.9 It is important that the **transition covers all three pillars of Solvency II**: The EESC agrees with the Commission that transitional rules should be possible with regard to the calculations, governance and reporting. There is a need to take account of the impact on the range of insurance products important for national markets. The fifth Quantitative Impact Study (QIS5) should be seen as a primary source of considerations for transitional requirements. TheQIS5 reveals that there is an urgent need for a consistent transitional concept (phase-in / phase-out), so that companies and supervisors have **sufficient time to prepare** themselves accordingly.

3.10 The EESC recommends that a proper assessment be carried out of how these transitional rules may be consistently **linked with supervisory actions** in the case of non-compliance with the new rules. A smooth transition should take into account the current supervisory intervention levels as well which ensure that **protection of policyholders will be not lower** than it is today.

3.11 The EESC recommends that the **transition should refer more explicitly to the upgraded Solvency I standards** as an (optional) minimum level.

3.12 As regards reporting, the EESC recommends working out in more detail not only the methods but also the content and timing of the reporting during the transitional period. Since there are doubts as to what should be included in the quarterly reports or even in the opening statement, it seems better to allow for adjustment to the reporting standards beyond the date of 1 January 2013. This will be essential for small and medium undertakings. In particular, mutual societies and other insurers with no access to the stock market should not be required to meet the same reporting obligations as international listed companies that have prepared IFRS accounts from the beginning or to work within the same short timelines.

Ensuring long-term guarantees for pensions

3.13 The EESC has stressed the **importance of sound and well-managed pension insurance** and other forms of old-age provision in the context of Europe's ageing societies, most recently in its opinion on the Commission's Green Paper on adequate, sustainable and safe pensions in Europe (EESC 72/2011).

3.14 The elaboration of policies on interest rate calculations for pensions is of paramount importance for the terms under which such protection may be obtained by consumers. The EESC is **concerned about the interest rate term structure** which is currently under discussion. It will probably lead to a massive decline in supply and a rise in the costs of pension products.

3.15 In this respect, the EESC takes a critical view of the fact that, according to the Omnibus II proposal of the Commission, the interest rate term structure and the illiquidity premium will not be determined by legislative bodies. The interest rate term structure and the interest rate risk determine the future of private old-age provision. Such an **important political decision cannot be taken only at the administrative level** of the EIOPA.

Challenges for EIOPA

3.16 More fundamentally, since both this proposal and the implementing measures still have to be adopted, the **timeframe for the effective launch of Solvency II would appear to be particularly challenging**. Insurance companies cannot be held accountable for instructions that are to be published at a late stage. The EESC therefore encourages the Commission to promptly issue such instructions or to allow for reasonable adjustment terms.

3.17 Similarly, the EESC acknowledges the important workload that the EIOPA has assigned itself, particularly as it is still is in the process of expansion and has not yet reached its expected staffing levels. Therefore, the EESC considers that the proposal under consideration may **overstretch its available capacities**, and expects the Commission to take due account of the balance of priorities that need to be assigned.

3.18 The EESC is of the opinion that careful consideration should be given as to whether the EIOPA will have sufficient resources for the powers and tasks assigned to it by the 2nd Omnibus Directive, particularly regarding technical input data and binding mediation, when Solvency II comes into effect. The proposal that the EIOPA develop draft implementing measure by 31 December 2011 at the latest would seem to be somewhat ambitious.

3.19 The EESC is aware of the fact that EIOPA is in the process of building up its personnel and knowledge. The transitional regime should reflect the resources conferred to EIOPA to avoid disruptions. The resources should be aligned with the powers and tasks.

3.20 This could affect the **balance of duties between the Member State supervisory bodies**, which should carry out the everyday supervision of companies falling under their remit in a consistent manner, and the new Authority.

3.21 More specifically, the EESC considers that the **group supervisor should be confirmed as having a leading role** in the approval of group-wide internal models, and that the Directive should leave no doubt as to the respective powers and responsibilities in place.

3.22 The EESC believes that the Commission is right to address the various different roles of the national supervisors and of the new EU insurance supervisory authority, the EIOPA. It is important to appropriately **include the possibility for the EIOPA to settle disagreements in a balanced way** in those areas where common decision making processes have already been foreseen in the Solvency II Directive or other sectoral legislation

Implementing power

3.23 The EESC holds the view that the functioning of the 'Lamfalussy system' of implementing financial regulation at different legal levels requires **a consistent cascade system** to ensure that technical standards build upon implementing measures, so that **no issues are regulated without a politically accountable basis**, especially with regard to subsidiarity, and that the focus of the implementing measures remains uniform and clear.

3.24 The EESC takes note of the Commission proposal for binding technical standards (Level 3) in areas where implementing measures (Level 2) have already been provided for. **Additional binding technical standards should be limited** in scope. It would be desirable if the future balance between the European institutions by delegating powers could be characterised by a greater clarity.

3.25 The EESC holds the view that the prioritisation of binding technical standards may be crucial for ensuring the quality of the harmonised rules. Certain implementing technical standards may not be necessary at the beginning of Solvency II and the EIOPA would be granted more time to develop them taking into account industry practice and the experiences of supervisors. Other implementing technical standards could be treated as optional ('may') and should be put in place only where there is a need for harmonisation in future.

3.26 Careful consideration should be given to the scope of technical standards. It is worth **raising the question of whether the foreseen density of regulation is really necessary** at European level in terms of subsidiarity. In case of any doubts, for individual implementing measures (Level 2), no additional technical standards (Level 3) should be provided for; e.g. Level 3 would not appear to be necessary in respect of the own risk and solvency assessment (ORSA), the classification of own funds or ring-fenced funds.

3.27 The rules at several levels would not be transparent. Moreover, it is possible that there may be national deviations for the same subjects of regulation. This would involve **too much complexity** – particularly for SMEs. One aspect which also needs careful consideration is the proposed extension of certain implementing measures on content.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON