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From: Presidency
To: Working Party on Financial Services and the Banking Union (Insurance)

Subject: Draft compromise on Reporting and Disclosure and Quality of Supervision

Draft compromise on Reporting and Disclosure and Quality of Supervision

A compromise proposal on quality of supervision has been produced and amended by the Slovenian Presidency on 16 December 2021, on the basis of discussions during the Working Party on Financial Services and the Banking Union as well as written submissions. As a follow up, written comments were then submitted to the French Presidency.

Reporting and disclosure

The main amendments to the initial proposal from the European Commission remain as follows and no changes were made since the submission of the compromise prepared by the Slovenian Presidency. As a reminder, previous changes were agreed on:

- Laying down principles about the reporting's frequency for the narrative report "Regular Supervisory Report" (every three years for LRP and at least every three years for insurance and reinsurance undertakings other than LRP)
- Clarifying some rules about the capacity of extension of the reporting deadlines when EIOPA declare an operations-disrupting event (extraordinary circumstances).
- Clarifying some stipulations about the new reporting requirement for the undertakings under partial and full internal models (annual calculation of the solvency capital requirement in accordance with the standard formula capital requirements).
- Underlining the auditing requirement for the Solvency and Financial Condition Report (SFCR) : clarify the scope (LRP and non-LRP) and underline the capacity for each member state to extend the requirement beyond the balance sheet :
 - o Member States may extend the obligation laid down in paragraph 1 to undertakings classified as low-risk profile undertakings, captive insurance undertakings and captive reinsurance undertakings.
 - o The amendment aims at keeping the faculty for each member State to extend the scope of the audit requirement to other elements of the solvency and financial condition report
 - o The audit shall be carried out by a statutory auditor or an audit firm, in accordance with the auditing standards applicable pursuant to Article 26 of Directive 2006/43/EC and Statutory auditors and audit firms, when performing this task, shall comply with the duties of auditors set out in Article 72.
- Delete the capacity of exemption on an item by item basis.

Quality of supervision

The main aspects amended within the last the Slovenian Presidency compromise were:

- Inclusion of the principle of proportionality for submission of information to Member States.
- Inclusion within Article 56 of the requirement that EIOPA shall issue guidelines to further specify the methods to be used when determining which insurance and reinsurance undertakings are relevant for the financial stability of the financial systems in the Union.

Following comments of Member states received by the French Presidency, two additional proposals for amendments are added:

- Deletion of paragraph 14 (regarding article 30(2) of the directive), considering that the provision regarding the inclusion of the system of governance in financial supervision is already covered in the currently existing regulation (article 36 of the directive).
- Specification that insurers shall inform the supervision authority in case of replacement of a person running the undertaking or a key function holder (amendment of § 22 regarding article 30(2) of the directive).

- (15) It is important that insurance and reinsurance undertakings maintain a healthy financial position. For that purpose, Directive 2009/138/EC provides for financial supervision with respect to an undertaking's state of solvency, the establishment of technical provisions, its assets and its eligible own funds. However, the system of governance of an undertaking is also an important factor in ensuring that the undertaking maintains its financial health. To that end, supervisory authorities should be required to carry out regular reviews and evaluations of the system of governance as part of their financial supervision of insurance and reinsurance undertakings.
- (17) Supervisory authorities should be entitled to receive from each supervised insurance and reinsurance undertaking and their groups, at least every three years, a regular narrative report with information on the business and performance, system of governance, risk profile, capital management and other relevant information for solvency purposes. In order to simplify this reporting requirement for insurance and reinsurance groups, it should be possible, subject to certain conditions, to submit the information of the regular supervisory report relating to the group and its subsidiaries in an aggregated way for the whole group.
- (19) Reporting and disclosure deadlines should be clearly laid down in Directive 2009/138/EC. However, it should be recognised that **exceptional ~~extraordinary~~** circumstances such as sanitary emergencies, natural catastrophes and other extreme events could make it impossible for insurance and reinsurance undertakings to submit such reports and disclosures, within the established deadlines. To this end, ~~the Commission~~ **supervisory authorities** should be **empowered** able to extend the deadlines ~~under such circumstances.~~ **after EIOPA has declared an operations-disrupting event as exceptional.**

- (20) Directive 2009/138/EC provides that supervisory authorities are to assess whether any new person appointed to manage an insurance or reinsurance undertaking or to perform a key function are fit and proper. However, those who manage the undertaking or perform a key function should be fit and proper on a continuous basis. Supervisory authorities should therefore have the power to react and, where appropriate, to remove the person concerned from the relevant position, in the case of non-compliance with the fit and proper requirements.
- (27) Directive 2009/138/EC requires the disclosure, at least, annually, of essential information through the solvency and financial condition report. That report has two main types of addressees: policyholders and beneficiaries on the one hand, and analysts and other market participants on the other hand. In order to address the needs and the expectations of those two different groups, the content of the report should be divided into two parts. The first part, addressed mainly to policyholders and beneficiaries, should contain the key information on business, performance, capital management and risk profile. The second part, addressed to analysts and other market participants, should contain detailed information on the system of governance, specific information on technical provisions and other liabilities, the solvency position as well as other data relevant for specialised analysts.
- (30) In order to guarantee the highest degree of accuracy of the information disclosed to the public, a **substantial** part of the solvency and financial condition report should be subject to audit. Such audit requirement should **at least** cover the balance sheet assessed in accordance with the valuation criteria set out in Directive 2009/138/EC.

(44) As part of the supervisory review process, it is important for supervisory authorities to be able to compare information across the companies they supervise. Partial and full internal models allow to capture the individual risk of a company better and Directive 2009/138/EC allows insurance and reinsurance undertakings to use them for determining capital requirements without limitations stemming from the standard formula. However, partial and full internal models make comparisons across companies more difficult and supervisory authorities would therefore benefit from access to the outcome of the **annual** calculation of **the solvency capital requirement in accordance with the** standard formula ~~capital requirements. All i~~Insurance and reinsurance undertakings should therefore regularly report such information to their supervisors.

Article 1

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(9) in Article 25, the following paragraph is added:

‘Each refusal of an authorisation, including the identification of the applicant undertaking and the reasons for refusal shall be notified to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (‘EIOPA’) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council*. EIOPA shall keep an updated database with such information and grant access to the database to supervisory authorities.

* Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).’;

~~(14) — in Article 30(2), the first subparagraph is replaced by the following:~~

~~‘Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its system of governance, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Union level.’;~~

(16) Article 35 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

‘Member States shall require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in Articles 27 and 28 and the general principles of supervision laid down in Article 29 **(1) and (2), and the principle of proportionality laid down in Article 29(3).**’;

(b) the following paragraph 5a is inserted:

‘5a. Taking into account the information required in paragraphs 1 and 2 **(a)(i)** and the principles set out in paragraphs 3 and 4, Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities a regular supervisory report that comprises information on the undertaking's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period.

The frequency of the regular supervisory report shall be:

(a) every three years, for low-risk profile undertakings;

(b) at least every three years for insurance and reinsurance undertakings other than low-risk profile undertakings.’;

(g) the following paragraph 12 is added:

‘12. By [OP please insert date = 2 years after publication date], EIOPA shall submit to the Commission a report on potential measures, including legislative changes, to develop an integrated data collection to:

- (a) reduce areas of duplications and inconsistencies between the reporting frameworks in the insurance sector and other sectors of the financial industry; and
- (b) improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, both Union and national.

EIOPA shall prioritise, but not limit itself to information concerning the areas of collective investment undertakings and derivatives reporting.

When preparing the report referred to in the first subparagraph, EIOPA shall work in close cooperation with the other European Supervisory Authorities and the European Central Bank and shall, where relevant, involve the national competent authorities.’;

Exemptions and limitations to quantitative regular supervisory reporting granted by supervisory authorities

1. Without prejudice to Article 129(4), where the predefined periods referred to in Article 35(2), point (a)(i) are shorter than one year the supervisory authorities concerned may limit regular supervisory reporting, where:

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) the information is reported at least annually.

That limitation to regular supervisory reporting shall be granted only to undertakings that do not represent more than 20 % of a Member State's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

When determining the eligibility of undertakings for those limitations, supervisory authorities shall give priority to low-risk profile undertakings.

2. The supervisory authorities concerned may limit regular supervisory reporting, or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where:

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) the submission of that information is not necessary for the effective supervision of the undertaking;

(c) the exemption does not undermine the stability of the financial systems concerned in the Union; and

(d) the undertaking is able to provide the information upon request.

~~Supervisory authorities shall not exempt from reporting, on an item-by-item basis, insurance or reinsurance undertakings that are part of a group within the meaning of Article 212(1), point (c), unless the undertaking can demonstrate to the satisfaction of the supervisory authority that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.~~

The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20 % of a Member State's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. When determining the eligibility of undertakings for those limitations or exemptions, supervisory authorities shall give priority to low-risk profile undertakings.

3. Captive insurance undertakings and captive reinsurance undertakings shall be exempted from regular supervisory reporting on an item-by-item basis where the predefined periods referred to in Article 35(2), point (a)(i), are shorter than one year, provided that they comply with both of the following conditions:

- (a) all insured persons and beneficiaries are any of the following:

legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part,

- natural persons eligible to be covered under that group’s insurance policies, provided that the business covering those natural persons remains below 5% of technical provisions;

- (b) the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance undertaking or captive reinsurance undertaking do not consist of any compulsory third-party liability insurance.

4. For the purposes of paragraphs 1 and 2, as part of the supervisory review process, in respect of undertakings classified as low-risk profile undertakings, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least:

- (a) the market risks that the investments of the undertaking give rise to;
- (b) the level of risk concentrations;
- (c) possible effects of the management of the assets of the undertaking on financial stability;
- (d) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in **paragraph Article 35(5)**.

5. For the purposes of paragraphs 1 and 2, as part of the supervisory review process, in respect of undertakings not classified as low-risk profile undertakings, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least, **the information pursuant to points (a) to (d) of paragraph 4 and the following**:

- (a) the volume of premiums, technical provisions and assets of the undertaking;
- (b) the volatility of the claims and benefits covered by the undertaking;
- (c) the total number of classes of life and non-life insurance for which authorisation is granted;
- (d) the appropriateness of the system of governance of the undertaking;
- (e) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement;
- (f) whether the undertaking is a captive insurance undertaking or a captive reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

6. In order to ensure the coherent and consistent application of paragraphs 1 to 5 of this Article, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) 1094/2010 to further specify:

- (a) the methods for determining the market shares referred to in paragraph 1, second subparagraph, and in paragraph 2, third subparagraph, of this Article;
- (b) the process to be used by the supervisory authorities to inform the insurance and reinsurance undertakings about any limitation or exemption referred to in this Article.’;

(18) the following Article 35b is inserted:

‘Article 35b

Reporting deadlines

1. Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in Article 35(1) to (4) on an annual or less frequent basis within 16 weeks following the undertaking's financial year end.

2. Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in Article 35(1) to (4) on a quarterly basis no later than five weeks after the end of each quarter.

3. Member States shall ensure that insurance and reinsurance undertakings submit the regular supervisory report referred to in Article 35(5a) no later than 18 weeks after the undertaking's financial year ends.

~~4. The Commission may adopt delegated acts in accordance with Article 301a to change the deadlines laid down in paragraphs 1, 2, and 3 of this Article, provided that the change is necessary due to sanitary emergencies, natural catastrophes or other extreme events.~~

4. Without prejudice to the powers of EIOPA under Article 18 of Regulation (EU) No 1094/2010, EIOPA may, at the request of one or several national supervisory authorities or on its own initiative, declare operations-disrupting events as exceptional. An operations-disrupting event may only be declared as exceptional if it is caused by a sanitary emergency, a natural catastrophe or another extreme event and if it affects materially the operational capabilities of insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business in one or several Member States.

Where EIOPA has declared an exceptional operations-disrupting event as exceptional, the national supervisory authorities concerned may, within 3 months following the declaration, temporarily extend, for affected undertakings, the deadlines referred to in paragraphs 1, 2 or 3 by up to 10 weeks. Based on the declaration by EIOPA of an operations-disrupting event as exceptional, the national supervisory authorities concerned may, where necessary, extend those deadlines for reporting obligations which are due within 6 months from the declaration by EIOPA.’;

(19) in Article 36(2), point (a) is replaced by the following:

‘(a) the system of governance, including the fit and proper requirements, as set out in Article 42 and the own-risk and solvency assessment, as set out in Chapter IV, Section 2;’;

(21) Article 41 is amended as follows:

(a) in paragraph 1, the third subparagraph is replaced by the following:

‘The system of governance shall be subject to regular internal review. Such internal review shall include an assessment on the adequacy of the composition, effectiveness and internal governance of the administrative, management or supervisory body taking into account the nature, scale and complexity of the risks inherent in the undertaking’s business.’;

(b) the following paragraph 2a is inserted:

‘2a. Member States shall require that insurance and reinsurance undertakings appoint different persons to carry-out the key functions of risk management, actuarial, compliance and internal audit, and that each such function is performed in an independent manner from the other in order to avoid conflicts of interests.’

(22) Article 42 is amended as follows:

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

‘2. Insurance and reinsurance undertakings shall notify the supervisory authority of any changes to the identity of the persons who effectively run the undertaking or are responsible for other key functions, along with *the reasons for the changes and all information needed to assess whether any new persons appointed to manage the undertaking are fit and proper.*

3. Insurance and reinsurance undertakings shall notify their supervisory authority if any of the persons referred to in paragraphs 1 and 2 no longer fulfil the requirements referred to in paragraph 1 or have been replaced for that reason.

(b) the following paragraph 4 is added:

‘4. Where a person who effectively runs the undertaking or has other key functions does not fulfil the requirements set out in paragraph 1, the supervisory authorities shall have the power to require the insurance and reinsurance undertaking to remove such person from that position.’;

(26) Article 51 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall, taking into account the information required in **paragraph Article 35(3) of this Article** and the principles set out in **Article 35(paragraph 4) of that Article**, require insurance and reinsurance undertakings to disclose publicly, on an annual basis, a report on their solvency and financial condition.

The solvency and financial condition report shall contain two separate parts **clearly identified and disclosed jointly**. The first part shall consist of information addressed to policyholders and beneficiaries, and the second part shall consist of information addressed to other market participants. ~~The two parts shall be disclosed jointly indicating clearly that the solvency and financial condition report consists of both parts.’;~~

(b) paragraph 1a is replaced by the following:

‘1a. The part of the solvency and financial condition report consisting of information addressed to policyholders and beneficiaries shall contain the following information:

- (a) a **brief** description of the business and the performance of the undertaking;
and
- (b) a brief description of the capital management and the risk profile of the undertaking.’;

(c) the following paragraphs 1b and 1c are inserted:

‘1b. The part of the solvency and financial condition report consisting of information addressed to other market participants shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements:

(a) a description of the business and the performance of the undertaking;
and

(b) a description of the system of governance;

(c) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation;

(d) a description of the capital management and the risk profile, including at least the following:

(i) the structure and amount of own funds, and their quality;

(ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;

(iii) for insurance and reinsurance undertakings relevant for the financial stability of the financial systems in the Union, information on risk sensitivity;

(iv) the option set out in Article 304 used for the calculation of the Solvency Capital Requirement;

(v) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;

(vi) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

1c. Where the matching adjustment referred to in Article 77b is applied, the description referred to in paragraph 1b, points (b), (c)(i) and (c)(ii), of this Article shall also describe the matching adjustment and the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position.

The description referred to in paragraph 1b, points (b), (c)(i) and (c) (ii), of this Article shall also contain a statement on whether the volatility adjustment referred to in Article 77d is used by the undertaking and, where the volatility adjustment is used, it shall disclose the following information:

(a) a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position;

(b) for each relevant currency or, as applicable, country, the volatility adjustment calculated in accordance with Article 77d and the corresponding best estimates for insurance or reinsurance obligations.';

(d) paragraph 2 is replaced by the following:

‘2. The description referred to in paragraph 1b, point (c)(i), shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

The disclosure of the Solvency Capital Requirement referred to in paragraph 1b, point (c)(ii), of this Article shall show separately the amount calculated in accordance with Chapter VI, Section 4, Subsections 2 and 3 and any capital add-on imposed in accordance with Article 37 or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 110, together with concise information on its justification by the supervisory authority concerned.

The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.’;

(e) the following paragraphs 3 to 8 are added:

5. By way of derogation from paragraph 1, reinsurance undertakings may not disclose the part of the solvency and financial condition report addressed to policyholders and beneficiaries.

7. Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in **the first paragraph of** this Article ~~on an annual or less frequent basis~~ within 18 weeks after the undertaking's financial year end **and that supervisory authorities have the power to temporarily extend this deadline in the case of an operations-disrupting event as declared by EIOPA, following the procedure referred to in Article 35b(4).**

8. As part of the report referred to in paragraph 1 of this Article, insurance and reinsurance undertakings shall be required to disclose the impact of using, for the purposes of determining the technical provisions pursuant to Article 77, the risk-free interest rate term structure determined without the application of the transitional for the extrapolation as referred to Article 77e(1), point (aa), instead of the relevant risk-free interest rate term structure.

However, by way of derogation from the first subparagraph, the disclosure requirement shall not apply to a currency for which one of the following applies:

(i) the share of future cash flows associated with insurance or reinsurance obligations in that currency relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 5 %;

(ii) with respect to future cash flows associated with insurance or reinsurance obligations in that currency, the share of future cash-flows pertaining to maturities where the relevant risk-free interest rate term structure is extrapolated relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 10 %.’;

(30) ~~in~~ Article 56 **is amended as follows:**

(a) the first paragraph is replaced by the following:

‘The Commission shall adopt delegated acts, in accordance with Article 301a, that further specify the information that insurance and reinsurance undertakings are required to disclose. ~~The Commission may adopt delegated acts in accordance with Article 301a to change the deadlines laid down in Article 51(7), provided that a change is necessary due to sanitary emergencies, natural catastrophes and other extreme events.’;~~

(b) the following paragraph is added at the end of this Article:

‘In order to ensure a coherent and consistent application of Article 51(1b)(c)(iii), EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) 1094/2010 to further specify the methods to be used when determining which insurance and reinsurance undertakings are relevant for the financial stability of the financial systems in the Union. EIOPA shall ensure consistency of the guidelines with other tools used for identifying insurance and reinsurance undertakings that are relevant for the financial stability of the financial systems in the Union for the purpose of its tasks pursuant to Regulation (EU) 1094/2010.’;

(47) in Article 112, paragraph 7 is replaced by the following:

‘7. After having received approval from supervisory authorities to use an internal model, ~~and each time they report the result of a calculation of the Solvency Capital Requirement pursuant to Article 102(1)~~, insurance and reinsurance undertakings shall provide the supervisory authorities with an estimate, **on an annual basis**, of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.’;
