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COMMISSION REGULATION (EU) .../...

of **XXX**

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard

17

(Text with EEA relevance)

COMMISSION REGULATION (EU) .../...

of **XXX**

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 17

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards¹, and in particular Article 3(1) thereof,

Whereas:

- (1) By Commission Regulation (EC) No 1126/2008² certain international accounting standards and interpretations that were in existence on 15 October 2008 were adopted.
- (2) On 18 May 2017, the International Accounting Standards Board (IASB) published International Financial Reporting Standard (IFRS) 17 *Insurance Contracts* and on 25 June 2020 amendments to IFRS 17 ('IFRS 17').
- (3) The adoption of IFRS 17 implies by way of consequence, amendments to the following standards or interpretations of standards: IFRS 1 *First-time Adoption of International Financial Reporting Standards*, IFRS 3 *Business Combinations*, IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations*, IFRS 7 *Financial Instruments: Disclosures*, IFRS 9 *Financial Instruments*, IFRS 15 *Revenue from Contracts with Customer*, International Accounting Standard (IAS) 1 *Presentation of Financial Statements*, IAS 7 *Statement of Cash Flows*, IAS 16 *Property, Plant and Equipment*, IAS 19 *Employee Benefits*, IAS 28 *Investments in Associates and Joint Ventures*, IAS 32 *Financial Instruments: Presentation*, IAS 36 *Impairment of Assets*, IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*, IAS 38 *Intangible Assets*, IAS 40 *Investment Property*, and Interpretation of the Standard Interpretations Committee SIC-27 *Evaluating the Substance of Transactions Involving the Legal Form of a Lease*.
- (4) IFRS 17 provides a comprehensive approach to the accounting for insurance contracts. The objective of IFRS 17 is to ensure that a company provides relevant information in its financial statements that faithfully represents the insurance contracts. That information gives a solid basis for users of financial statements to assess the effect that

¹ OJ L 243, 11.9.2002, p. 1.

² Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

insurance contracts have on the company's financial position, financial performance and cash flows.

- (5) IFRS 17 applies to insurance contracts, reinsurance contracts as well investment contracts with discretionary participation features. Within the Union there are many different life insurance and life savings contracts with an approximate total best estimate liability of EUR 5,9 trillion (excluding unit linked contracts). In several Member States, some of those contracts have direct participation and discretionary features, which allow for sharing of risks and cash flows between different generations of policyholders.
- (6) In a number of Member States, life insurance contracts are also managed across generations in order to mitigate exposure to interest rate and longevity risks and have a dedicated pool of assets underlying the insurance liability, but those contracts do not have direct participation features as defined by IFRS 17. Where meeting the requirements of Directive 2009/138/EC of the European Parliament and of the Council³ and upon approval by the insurance supervisors, some of those contracts can apply the matching adjustment for the computation of their Solvency II ratio.
- (7) The Union can adopt IFRS 17 as issued by the IASB only where it meets the criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.
- (8) The endorsement advice of the European Financial Reporting Advisory Group (EFRAG) concluded that IFRS 17 meets the criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. However, EFRAG did not reach consensus on whether the grouping of intergenerationally-mutualised and cash flow matched contracts into annual cohorts meets the technical endorsement criteria, or is conducive to the European public good. This is in line with the views expressed by stakeholders on EFRAG's endorsement advice and the views of Member State experts in the Accounting Regulatory Committee.
- (9) Union companies should be able to apply IFRS 17 as issued by the IASB to facilitate listing in third countries, or to meet global investors' expectations.
- (10) However, the annual cohort requirement as a unit of account for groups of insurance and investment contracts does not always reflect the business model, nor the legal and contractual features of intergenerationally-mutualised and cash flow matched contracts referred to recitals (5) and (6). Those contracts represent more than 70 % of the total life insurance liabilities in the Union. The annual cohort requirement applied to such contracts does not always have a favourable cost-benefit balance.
- (11) In light of the global capital market context of IFRS, deviations from IFRS should be limited to exceptional circumstances and narrow in scope.
- (12) Therefore, notwithstanding the definition of group of insurance contracts set out in Appendix A of the Annex to this Regulation, Union companies should have the option to exempt intergenerationally-mutualised and cash flow matched contracts from the annual cohort requirement of IFRS 17.
- (13) Investors should be able to understand if a company has applied the exemption from the annual cohort requirement for groups of contracts. A company should therefore disclose in accordance with International Accounting Standard 1 *Presentation of*

³ 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) (OJ L 335, 17.12.2009, p. 1).

Financial Statements, in the notes to its financial statements the use of the exemption as a significant accounting policy and provide other explanatory information such as for which portfolios it has applied the exemption. This should not imply a quantitative assessment of the impact of the use of the optional exemption from the annual cohort requirement.

- (14) The Commission should by 31 December 2027 review the exemption from the annual cohort requirement for intergenerationally-mutualised and cash flow matched contracts, taking into account the IASB post-implementation review of IFRS 17.
- (15) Regulation (EC) No 1126/2008 should therefore be amended accordingly.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Annex to Regulation (EC) No 1126/2008 is amended as follows:
 - (a) International Financial Reporting Standard (IFRS) 17 *Insurance Contracts* is inserted as set out in the Annex to this Regulation;
 - (b) IFRS 1 *First-time Adoption of International Financial Reporting Standards*, IFRS 3 *Business Combinations*, IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations*, IFRS 7 *Financial Instruments: Disclosures*, IFRS 9 *Financial Instruments*, IFRS 15 *Revenue from Contracts with Customer*, International Accounting Standard (IAS) 1 *Presentation of Financial Statements*, IAS 7 *Statement of Cash Flows*, IAS 16 *Property, Plant and Equipment*, IAS 19 *Employee Benefits*, IAS 28 *Investments in Associates and Joint Ventures*, IAS 32 *Financial Instruments: Presentation*, IAS 36 *Impairment of Assets*, IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*, IAS 38 *Intangible Assets*, IAS 40 *Investment Property*, and Interpretation of the Standard Interpretations Committee SIC-27 *Evaluating the Substance of Transactions Involving the Legal Form of a Lease* are amended in accordance with IFRS 17 as set out in the Annex to this Regulation.

Article 2

1. Each company shall apply the amendment referred to in Article 1 at the latest as from the commencement date of its first financial year starting on or after 1 January 2023.
2. By way of derogation from paragraph 1, a company may choose not to apply the requirement laid down in paragraph 22 of the Annex to this Regulation to:
 - (a) groups of insurance contracts with direct participation features and groups of investment contracts with discretionary participation features as defined in Appendix A to the Annex to this Regulation, and with cash flows that affect or are affected by cash flows to policyholders of other contracts as laid down in paragraphs B67 and B68 of Appendix B of that Annex;
 - (b) groups of insurance contracts that are managed across generations of contracts and that meet the conditions laid down in Article 77b of Directive 2009/138/EC and have been approved by supervisory authorities for the application of the matching adjustment.

When a company does not apply the requirement laid down in paragraph 22 of the Annex to this Regulation in accordance with paragraph 2 (a) or 2 (b) it shall disclose this, in accordance with International Accounting Standard 1 *Presentation of Financial Statements*, in the notes as a significant accounting policy and provide other explanatory information such as for which portfolios the company has applied this exemption.

Article 3

The Commission shall review the optional exemption laid down in Article 2(2) by 31 December 2027 and, where appropriate, propose to amend or end that exemption.

Article 4

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula von der Leyen