

Sixth (and last) trilogue on the Solvency II review

(proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision)

COM [2021/581 - 2021/0295\(COD\)](#)

13 December 2023

***Summary:** Yesterday, co-legislators reached a provisional agreement on the Solvency II review.*

Co-legislators, with hands-on support from the Commission, managed to find a compromise on all remaining items of the proposal. On cross border activities, co-legislators agreed on the thresholds of what is significant cross-border activity at EUR 15 million combined with supervisory discretion and EIOPA ability to call, in relation to an insurer facing significant issues and for which supervisory actions are insufficient, for the launch of a joint on-site inspection with no possibility for the home to refuse. On long-term guarantees and long-term equity, co-legislators converged on the risk margin including the cost-of-capital rate (at 4,75% which is slightly higher compared to previous trilogue's preliminary agreement) and a Commission periodic review only after 5 years. On extrapolation, the weight to the ultimate forward rate is set at 77.5% (in-between 75% as proposed by the Council - supported by the Commission) and 80% as put forward by the Parliament). Also, on volatility adjustments co-legislators agreed on the

level of the overshooting ratio at 105% and on provisions pertaining to risk correction, where a cap to its level would have to be set in level 2. Regarding symmetric adjustment, co-legislators agreed on a 13% corridor and no exemptions for unit-linked assets. On sustainability, the compromise found involves disclosure of certain elements of the prudential plans in the solvency and financial condition report, including quantitative targets, as well as the possibility for a single plan at group level. The content of the plans would be developed by RTS. Agreement was also found on reporting (including somewhat clumsy reference to publication of stress test results, the legal instrument for reporting deadline extension in exceptional circumstances and some Member State specific exemptions); group supervision, a recital on securitisation and transposition deadline (24 months).

The deal contains important wins for both co-legislators while overall preserving the objectives of the Commission's proposal.

Next steps: *Technical work to continue on 20 and 21 December. Whilst the provisional agreement is expected to be announced at the COREPER of 20 December, text is likely to be presented for approval only in January.*

Report: Katarzyna Kobylinska-Hilliard (SG) with thanks to DG FISMA D.4 team.

In detail

Cross-border activities

In the fifth trilogue of 6 December, the Parliament offered a ‘package deal’ where the thresholds of what is significant cross-border activity would be fully aligned with the Council’s mandate (absolute threshold of 15 million and no relative threshold), while EIOPA would be granted more own-initiative powers in line with the Parliament’s mandate. The Council insisted that it could not accept any EIOPA’s own-initiative powers, and in particular a possibility for EIOPA, on own-initiative, to request from a national supervisory authority to carry out on-site inspections. The Commission stressed the importance to preserve some improvements in relation to information exchange and EIOPA’s role within platforms and recommended keeping at least EIOPA’s power to request the launch of a joint on-site inspection, which could be combined with the deletion of the own-initiative binding mediation. This was however not acceptable to the Council, and co-legislators finally converged based on drafting delivered by the Commission services during the Trilogue, whereby own-initiative is not mentioned, but EIOPA is given the possibility to call for joint on-site inspection – with no possibility for the home authority to refuse – where an insurer has significant deficiencies with insufficient supervisory response.

Long-term Guarantees/Long-term Equity (LTG/LTE)

The open issues after the fifth trilogue included risk margin (review clause), extrapolation (floor at 75% or 80%), and volatility adjustment (overshooting ratio and risk correction).

On risk margin, in the previous trilogue co-legislators converged on cost-of-capital rate of 4.5% but the issue of a periodical review by the Commission remained open. The Commission argued that a short-term review clause is important and agreed to the framing between 4% and 5% discussed in the previous trilogue. The co-legislators converged on a possibility of a review within those frames but not earlier than after 5 years. The Commission expressed its disappointment with the long period of time for the periodic review which may prevent using level 2 if interest rates go down. On extrapolation, the Parliament proposed a compromise of setting the weight of the UFR at 77,5% (between Council's 75% and Parliament's 80%). This was not acceptable to the Council in combination with risk margin of 4,5%. The Commission also confirmed its preference for the Council's 75% or alternatively a higher cost-of-capital rate. The co-legislators converged on cost-of-capital rate of 4,75% with a review clause not earlier than in 5 years allowing the Commission to reset it within a band of 4-5% and the weight of the UFR at 77,5%.

Regarding volatility adjustment, the Parliament recalled its preference for 105% overshooting ratio. The Council, like the Commission, preferred 100% but in the end accepted the Parliament's proposal, which is also acceptable for the Commission. On risk correction, the Parliament proposed to add a cap to risk correction expressed as a % of long-term average spreads (ideally at 50%). The Council was open to meeting the Parliament halfway if this cap was to apply to clearly defined exceptional circumstances. The Commission had strong reservations as to a cap with respect to long-term average spreads [in particular if this cap is set in Level 1 to 50%] because with the additional amendment envisaged by the Parliament up to 43% of companies could face overshooting (which is much more than 13% without those changes). The co-legislators converged on a reference to the cap to be defined in Level 2.

Regarding long term equities, the Council insisted on including equities held with alternative investment funds, which was already captured in previous draft compromises as part of collective investment undertakings. On symmetric adjustment, the Parliament was defending a 17% corridor (in line with Commission) but could accept that symmetric adjustment should not apply to unit-linked assets. The Council proposed keeping 10% corridor also without disapplication to unit-linked assets. The Commission recalled that since the great financial crisis, the symmetric adjustment would have never exceeded 10%, and therefore the extension of the corridor would not be detrimental to long-term investments. Expressed openness to an intermediate value (between 10% and 17%). Commission was more concerned about the possibility to disapply the symmetric adjustment to unit-linked assets. The co-legislators converged on 13% and no exclusion of unit-linked assets.

Sustainability and governance

The Council tried to reopen the topic of prudential plans, deviating from the preliminary agreement reached at the last trilogue. The Council argued that any such plan should be based on a prior materiality analysis and wanted to introduce prudential plans at the level of the group. The Council favoured exempting subsidiaries belonging to a group as well as small and non-complex undertakings. Regarding disclosure, publication of internal management tools, such as plans and results of climate scenario analyses, was seen by the Council as problematic as it could lead to significant reputational risks and the risk of watering down the content of these plans and the quality of the scenario analyses.

With the aim of bridging the differences between co-legislators on the disclosure of plans, the Commission proposed that it could consider broadening the mandate for EIOPA on the review as regards sustainability risks to study the need for Pillar III (disclosure) rules for the new prudential plans and report their findings to the Commission. Regarding disclosure of scenario analysis, the Commission warned about the risk of opening the door to duplication of disclosures.

The Parliament disagreed with the new provision on plans submitted by the Council, especially regarding the exemption for small and non-complex undertakings, and did not accept the Commission's compromise proposal on disclosures.

Following this discussion, the Council agreed to revert to the preliminary agreement on prudential plans reached in the previous trilogue, combined with a compromise solution proposed by the Parliament to have some information regarding these plans in the solvency and financial condition report, including quantifiable targets, and transforming EIOPA guidelines on the content of the plans into an RTS.

The Parliament conceded to the Council on the possibility for a single plan at group level with a recital stating that risks for the subsidiaries must be fully respected. Regarding the disclosure of scenario analysis results, the landing zone seemed to point to a middle ground based on the building block document presented by the technical team in the previous political trilogue.

Reporting and Auditing

The Parliament insisted on the publication of stress test, which was supported by the Commission. The Council argued that publication of individual stress tests could lead to confusing results and would prefer publication of results for the insurance sector as a whole. In the end, an agreement was found based on the initial Parliament's position which does not prevent supervisory authorities from publishing individual results of stress tests.

On the question of the legal instrument to frame the extension of reporting deadlines in exceptional circumstances the Parliament expressed strong preference for a delegated act, which was acceptable for the Commission. While the Council previously insisted on NCA discretion, it conceded to a delegated act in exchange for its proposal for an exemption concerning the Portuguese actuaries which is aligned with the. previously proposed Commission idea of a a strictly framed grandfathering clause.

Group Supervision

The only element remaining for discussion pertained to a review report on FICOD and Solvency II, on which the Parliament insisted. The Council insisted on framing the review clause to limit the Commission review, however, the Commission explained that it maintains a discretion to carry out a broader review in any case. Agreement was reached in line with the Parliament's suggestion to add reference to a review of Solvency II.

Council proposal on securitisation

The Council had proposed to include a review clause on securitisation, arguing that it is important for advancing CMU. The Commission confirmed that in the spirit of compromise it can accept the recital and the Parliament conceded in light of the overall agreement on the file.

Transposition deadline

Agreement was reached on 24 months after entry into force.