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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Experience of the financial crisis has exposed important failures in financial supervision. President Barroso therefore requested a group of high level experts, chaired by Mr Jacques de Larosière, to make proposals to strengthen European supervisory arrangements. The Group presented its report on 25 February 2009. Building on its recommendations, the Commission set out proposals for a new European financial supervisory architecture in its Communication to the Spring European Council of March 2009. The Commission presented its ideas in more detail in its Communication of May 2009 which proposed:

- Establishing a European System of Financial Supervisors (ESFS), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by transforming the existing European supervisory committees¹ into a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA), thereby combining the advantages of an overarching European framework for financial supervision with the expertise of local micro-prudential supervisory bodies that are closest to the institutions operating in their jurisdictions; and
- Establishing a *European Systemic Risk Board (ESRB)*, to monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole. To this end, the ESRB would provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks.

The Communication also concluded that in order for the ESFS to work effectively, changes to the financial services legislation would be necessary, in particular to provide an appropriate scope to the more general powers provided for in the individual regulations establishing the authorities, ensuring a more harmonised set of financial rules through the possibility to develop draft technical standards and facilitate the sharing, where necessary, of micro-prudential information.

2. CONSULTATION OF THE INTERESTED PARTIES

Two open consultations were conducted in the development of these proposals. Firstly, following the report of the high-level group chaired by Jacques de Larosière and the publication of the 4 March 2009 Commission Communication, the Commission organised a first consultation from 10 March to 10 April 2009 as input to its Communication on Financial Supervision in Europe published on 27 May 2009. A summary of the public submissions received can be found at:

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision/summary_en.pdf

¹ These are the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR).

Secondly, from 27 May to 15 July 2009, the Commission organised another consultation, inviting all interested parties to comment on the more detailed reforms presented in the Communication on Financial Supervision in Europe of 27 May 2009. The responses received were for the greater part supportive of the suggested reforms, with comments on detailed aspects of the proposed ESRB and ESFS. A summary of the public submissions received can be found at:

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision_may/replies_summary_en.pdf

Additionally, a Commission Services Staff Working Paper was published on 23 September 2009 to preview the possible areas where amendments to sectoral legislation may be necessary. The working paper can be found at:

http://ec.europa.eu/internal_market/finances/docs/committees/supervision/20090923/sec2009_1233_en.pdf

3. IMPACT ASSESSMENT

The May Commission Communication on Financial Supervision in Europe was accompanied by an impact assessment analysing the main policy options for establishing the ESFS and ESRB. A second impact assessment accompanied the legislative proposals, examining the options in more detail. The second impact assessment analysed the options for the appropriate powers for the authorities to work towards achieving a single set of harmonised rules and concluded that this capacity would be rightly limited to those areas to be defined in forthcoming sectoral legislation, and identified such potential areas. Additionally, in developing the draft technical standards themselves, the authorities should undertake appropriate analysis of potential related costs and benefits and consult stakeholders before submitting them to the Commission.

The second impact assessment report is available at:

http://ec.europa.eu/internal_market/finances/committees/index_en.htm#package

4. LEGAL ELEMENTS OF THE PROPOSAL

Given that changes need to be introduced into existing Directives to ensure the development of a single rule book, an amending Directive is the most appropriate instrument. This amending Directive should have the same legal basis as the Directives it amends.

5. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget.

6. DETAILED EXPLANATION OF THE PROPOSAL

On 23 September 2009, the Commission adopted proposals for Regulations establishing EBA, EIOPA, and ESMA.² "In this respect the Commission wishes to recall the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations establishing the European Supervisory Authorities according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

Along with those Regulations and in order for the ESFS to work effectively, changes to the sectoral legislation are necessary. The areas in which amendments are proposed fall broadly into the following categories:

- Definition of the appropriate scope of **technical standards** as an additional tool for supervisory convergence and with a view of developing a single rule book;
- To appropriately integrate the possibility for the authorities to **settle disagreements** in a balanced way to those areas where common decision making processes already exist in sectoral legislation;
- **General amendments** which are common to most sectoral legislation and necessary for the directives to operate in the context of new authorities for example, renaming the level 3 committees to the new authorities and ensuring the appropriate gateways for the exchange of information are present; and
- **Additional amendments** to the Solvency II Directive.

This amending directive is proposed to amend the following legislation:

- Directive 2003/71/EC: Prospectus Directive
- Directive 2009/138/EC: Solvency II Directive

For detailed explanations of the categories of amendments see the Explanatory Memorandum to Commission proposal COM(2009) 576 final of 26 September 2009.

6.1 Further amendments to the Solvency II Directive

To adjust existing level 2 empowerments to the Lisbon Treaty

Given the recent entry into force of the Lisbon Treaty, the Solvency II directive needs to be adjusted to take account of the new Treaty. Existing level 2 empowerments which qualify as delegated acts according to Article 290 TFEU should therefore be transformed into empowerments for delegated acts. Appropriate control procedures should be foreseen.

Transitional Requirements

² http://ec.europa.eu/internal_market/finances/committees/index_en.htm#package

It is necessary to provide for the specification of transitional requirements for a number of reasons. There should be a smooth transition to the new regime, market disruption should be avoided, and impacts on the range of important insurance products should be able to be taken into account. It should also be possible for proper consideration to be given to significant and valuable industry-wide information to be obtained from the quantitative impact study (QIS5). Transitional requirements should therefore be possible in relation to valuation, governance, supervisory reporting and public disclosure, the determination and classification of own funds, the standard formula for the calculation of the Solvency Capital Requirement and the choice of methods and assumptions for the calculation of technical provisions, including the determination of the relevant risk-free interest rate term structure. It is also necessary to enable level 2 measures to specify transitional arrangements in relation to the treatment of third country regimes in order to acknowledge that some third countries may need more time to adapt and implement a solvency regime that would fully satisfy the criteria for being recognised as equivalent. It should be possible for the transitional requirements set out in Directive 2009/138/EC, as amended by this Directive, to have their non essential elements further specified in delegated acts. While the maximum periods for the transitional requirements are to be set out in Directive 2009/138/EC, the actual time period selected in any delegated act may be for a lesser period and should be proportionate to the particular basis upon which the transitional requirements is demonstrated to be necessary in order to facilitate the application of the new regime. The transitional requirements should be at least equivalent, in effect, to the existing framework on insurance and reinsurance directives and should not result in more favourable treatment for insurance and reinsurance undertakings, or lower protection for policy holders, than currently exists. The transitional requirements should encourage undertakings to move towards compliance with the particular requirements of the new regime as soon as possible.

Amending level 2 empowerments

In order to allow for greater convergence on procedures for supervisory approvals already provided for in Solvency II of undertaking specific parameters, model change policies, special purpose vehicles and the setting and removal of capital add-ons, the Commission should be empowered to adopt measures by means of delegated acts specifying procedure in these areas. It is also necessary to ensure cross-sectoral consistency to enable level 2 measures in the context of investments in repackaged loans to not only specify requirements but also specify the consequences of breaching those requirements.

To include the European Cooperative Society (SCE) in the list of permissible forms of insurance and reinsurance undertakings

In order to enable European cooperatives to provide insurance and reinsurance services, it is necessary to extend the list of permissible legal forms of insurance and reinsurance undertakings to include the European Cooperative Society (SCE) as defined in Regulation (EC) No.1435/2003³.

Euro amount of the absolute floor of the MCR

An amendment is necessary to reflect the adaptation to the Euro amount of the MCR floor for captive reinsurance undertakings. This arises out of the periodic adjustment of the existing capital requirement floors for such undertakings to take account of inflation.⁴

Extension of two months to implementation date

³ OJ L 207, 18.8.2003, p. 1.

⁴ OJ C 63 of 18/03/2009, p. 11.

In order to better align the start of the various new reporting, calculation and other obligations of the Solvency II regime with the date (31 December) which marks the end of the financial year of the majority of insurance undertakings, amendments which extend the relevant transposition, repeal and application dates by 2 months are necessary.

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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

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 Articles 50, 53, 62, and 114 thereof,

Having regard to the proposal from the Commission⁵,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the European Central Bank⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 23 September 2009, the Commission adopted proposals for three Regulations establishing the European System of Financial Supervisors including the creation of the three European Supervisory Authorities (ESA).
- (2) In order for the European System of Financial Supervisors (ESFS) to work effectively, changes to Union legislation in the field of operation of the three Authorities are necessary. Such changes concern the definition of the scope of certain powers of the ESAs, the integration of certain powers in existing processes established in relevant Union legislation and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.
- (3) The establishment of three ESAs should be accompanied by the development of a single rule book to ensure consistent harmonisation and uniform application and thus contribute to a more effective functioning of the internal market. The regulations establishing the ESFS provide that the ESAs may develop draft technical standards in the areas specifically set out in the relevant legislation, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. Whereas Directive .../.... [Omnibus I] has identified a first set of such areas, this

⁵ OJ C [...], [...], p. [...]. [This should be footnote 1]

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

Directive should identify a further set of areas, in particular for Directive 2003/71/EC and Directive 2009/138/EC, without prejudice to adding further areas in the future.

- (4) The relevant legislation should define those areas where the ESAs are empowered to develop draft technical standards and how such standards should be adopted. The relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts.
- (5) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. The only areas selected should be those in which consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.
- (6) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards adopted as delegated acts should further develop, specify and determine the conditions for consistent harmonisation of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should set conditions for the uniform application of legally binding Union acts. Technical standards should not involve policy choices.
- (7) In the case of regulatory technical standards it is appropriate to introduce the procedure provided for in Articles 10 to 14 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA]. Implementing technical standards should be adopted in accordance with the procedure provided for in Article 15 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA]. The European Council endorsed the four-level 'Lamfalussy' approach to make the regulatory process for Union financial legislation more efficient and transparent. The Commission is empowered to adopt level-2 measures in many areas, and a large number of level-2 Commission regulations and directives are in force. In cases where the technical standards are designed to further develop, specify or determine the conditions of application of such level-2 measures, they should be adopted only once the relevant level-2 measure has been adopted and should respect the content of that level-2 measure.
- (8) Binding technical standards contribute to a single rulebook for financial services legislation as endorsed by the European Council in its conclusions of June 2009. To the extent that certain requirements in Union legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, where those legislative acts provide for such discretion.

- (9) As set out in the regulations establishing the ESFS, before submitting the technical standards to the Commission, the ESA should, where appropriate, conduct open public consultations relating to them and analyse the potential related costs and benefits.
- (10) It should be possible for technical standards to provide for transitional measures subject to adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.
- (11) The Regulations establishing the ESFS provide for a mechanism to settle disagreements between competent national authorities. Where a competent authority disagrees with the procedure or content of an action or inaction by another competent authority in areas specified in legal acts of the Union in accordance with Regulation (EU) No .../ 2010 [EBA], Regulation (EU) No .../ 2010 [ESMA] and Regulation (EU) No .../ 2010 [EIOPA], where the relevant legislation requires cooperation, coordination or joint decision-making by competent national authorities from more than one Member State, the ESA, at the request of one of the competent authorities concerned, should be able to assist the authorities in reaching an agreement within the time limit set by the ESA which should take into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the ESA should be able to settle the matter.
- (12) The regulations establishing the ESAs require that the cases where the mechanism to settle disagreements between competent national authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a first set of such cases and should be without prejudice to adding further cases in the future. This Directive should not prevent the ESAs from acting in accordance with other powers or fulfilling tasks specified in their establishing regulations, including non-binding mediation and contributing to the consistent, efficient and effective application of legal acts of the Union. Moreover, in those areas where some form of non-binding mediation is already established in the relevant legal act, or where there are time limits for joint decisions to be taken by one or more competent national authorities, amendments are needed to ensure clarity and minimum disruption of the process for reaching a joint decision, but also that where necessary, the ESAs should be able to resolve disagreements. The binding procedure for the settlement of disagreements is designed to solve situations where competent supervisors cannot resolve, among themselves, procedural or substantive issues relating to compliance with legal acts of the Union.
- (13) This Directive should therefore identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the supervisors may not be able to resolve the matter on their own. In such a situation, one of the supervisors involved should be able to raise the issue with the competent ESA. That ESA should act in accordance with the procedure set out in its establishing regulation and in this Directive. It should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned. In cases where the relevant legal act of the Union confers discretion on Member States, decisions taken by a ESA should not replace the exercise of discretion by the competent authorities in compliance with Union law.

- (14) 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)⁸ provides for joint decisions as regards the approval of applications to use an internal model at group and subsidiary levels, the approval of applications to make a subsidiary subject to Articles 238 and 239 of that Directive and the identification of the group supervisor on a different basis from the criteria set out in Article 247 of that Directive. In all of these areas, an amendment should clearly state that in the event of disagreement, the European Insurance and Occupational Pensions Authority (EIOPA) may resolve the disagreement using the process outlined in Regulation .../... [EIOPA]. This approach would make it clear that disagreements can be resolved and cooperation strengthened before a decision is made or issued to an institution. EIOPA's role in resolving disagreements is to mediate between the conflicting views of the supervisory authorities rather than to substitute judgements in the matters concerned. The fact that EIOPA has acted to mediate a specific disagreement should not be understood as meaning that EIOPA should have an ongoing role in the supervision of the subject matter of the application.
- (15) The new supervisory architecture established by the ESFS will require national supervisory authorities to cooperate closely with the ESAs. Amendments to the relevant legislation should ensure there are no legal obstacles to the information sharing obligations included in the regulations proposed by the Commission establishing the ESAs.
- (16) In areas where the Commission is currently empowered by Directive 2009/138/EC to adopt implementing measures where these measures are non-legislative acts of general application to supplement or amend certain non-essential elements of that Directive in the sense of Article 290 TFEU, the Commission should be empowered to adopt delegated acts in accordance with that Article.
- (17) In order to allow for the consistent calculation of technical provisions by insurance and reinsurance undertakings under Directive 2009/138/EC, it is necessary for a central body to derive, publish, and update certain technical information related to the risk-free interest rate term structure, which takes account of observations in the financial market, and for the body to be able to do this on a regular basis. Given the technical and insurance related nature of these tasks, they should be carried out by EIOPA.
- (18) In order to ensure that certain technical inputs to the Solvency Capital Requirement (SCR) using the standard formula are provided on a harmonised basis, for instance to allow for harmonised approaches toward the use of ratings, specific tasks should be assigned to EIOPA. The detailed manner for the exercise of such tasks should be further specified in measures to be adopted by delegated act.
- (19) In order to ensure a harmonised approach under Directive 2009/138/EC in determining where an extension to the recovery period in cases of breaches of the SCR is permitted, the conditions which constitute "an exceptional fall in the financial markets" should be specified. EIOPA, upon request from the supervisory authority concerned, should be responsible for determining whether those conditions have been

⁸ OJ L 335, 17.12.2009 p. 1-155

fulfilled and the Commission should be empowered to adopt measures by means of delegated acts specifying the relevant procedures to be followed.

- (20) In order to ensure cross-sectoral consistency and to remove the misalignment between the interests of firms that "repackage" loans into tradable securities and other financial instruments (originators) and the interests of insurance or reinsurance undertakings that invest in such securities or instruments, the Commission should be empowered to adopt measures by means of delegated act in the context of investments in repackaged loans under Directive 2009/138/EC, specifying not only the requirements but also the consequences of breaching those requirements.
- (21) In order to allow for greater convergence on procedures for supervisory approvals provided for in Directive 2009/138/EC of undertaking specific parameters, model change policies, special purpose vehicles and the setting and removal of capital additions, the Commission should be empowered to adopt measures by means of delegated act specifying procedure in these areas.
- (22) The development of international convergence toward risk-based solvency regimes should be encouraged. In order to acknowledge that some third countries may need more time to adapt and implement a solvency regime that would fully satisfy the criteria for being recognised as equivalent, it is necessary to enable Commission measures adopted by means of delegated act to specify transitional arrangements in relation to the treatment of such third country regimes, particularly where a public commitment to converge to a regime equivalent to Directive 2009/138/EC has been made.
- (23) In order to enable the European Cooperative Society, established in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)⁹, to provide insurance and reinsurance services, it is necessary to extend the list of permissible legal forms of insurance and reinsurance undertakings under Directive 2009/138/EC to include the European Cooperative Society (SCE).
- (24) The amounts in euro of the Minimum Capital Requirement floor for captive reinsurance undertakings should be adapted. Such an adaptation arises out of the periodic adjustment of the existing capital requirement floors for such undertakings to take account of inflation.¹⁰
- (25) In order to better reflect the date which marks the end of the financial year for the majority of insurance undertakings (31 December) and to enable a smoother transition between the old and new regimes, the relevant transposition, repeal and application dates in Directive 2009/138/EC should be extended by two months.
- (26) Certain implementing powers designed under Article 202 of the Treaty establishing the European Community (EC Treaty) should be replaced with the appropriate provisions in accordance with Article 290 TFEU.

⁹ OJ L 207, 18.8.2003, p. 1.

¹⁰ OJ C 63, 18.03.2009, p. 11.

- (27) The alignment of comitology procedures to the TFEU and, in particular, to Article 290 thereof, should be effected on a case-by-case basis. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU. In particular, the delegated acts should be adopted in respect of details concerning governance requirements, valuation, supervisory reporting and public disclosure, the determination and classification of own funds, the standard formula for the calculation of the Solvency Capital Requirement (including any consequential changes in the area of capital add-ons) and the choice of methods and assumptions for the calculation of technical provisions.
- (28) The European Parliament and the Council should have two months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by one month with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.
- (29) In order to allow for a smooth transition under Directive 2009/138/EC to a new regime, it is necessary to provide for transitional requirements relating to governance requirements, valuation, supervisory reporting and public disclosure, the determination and classification of own funds, the standard formula for the calculation of the Solvency Capital Requirement (including any consequential changes in the area of capital add-ons) and the choice of methods and assumptions for the calculation of technical provisions. Where such changes are made at the level of the individual undertaking, corresponding and consequential changes should be made to the calculation of group solvency, and supervisory reporting and public disclosure at group level. Where such changes concern group supervisory reporting and group public disclosure, the appropriate transitional provisions should apply *mutatis mutandis* at group level. In relation to group solvency, Article 218(2) and (3) provide the basis for solvency requirements for supervision in cases of application of group supervision mentioned in Article 213. The methods and principles for calculating group solvency referred to in Article 218 are set out in more detail in Articles 220 to 235. Those methods and calculations apply (whether directly or by analogy) to cases of application of group supervision mentioned in Article 218. To the extent that such group solvency rules make reference to solvency rules at the level of the individual undertaking and where a transitional solvency regime is applied at individual level corresponding adaptations may need to be made to the group solvency rules.
- (30) The transitional requirements should aim at avoiding market disruption and limiting interferences with existing products as well as ensuring the availability of insurance products. The provisions of transitional requirements should also allow proper consideration to be taken of the significant and valuable industry -wide information to be obtained from the quantitative impact study (QIS5). The transitional provisions set out in Directive 2009/138/EC should further specify non-essential elements to be determined by delegated acts. While the maximum periods for the transitional provisions are to be set out in Directive 2009/138/EC, the actual time period selected in any delegated act may be for a shorter period and should reflect the specific

characteristics of the provisions and facilitate the application of the new regime. The transitional requirements should at least be equivalent, in effect, to the existing framework on insurance and reinsurance directives and should not result in more favourable treatment for insurance and reinsurance undertakings, or lower protection for policy holders, than currently exists. In terms of solvency requirements, this means that these should during any possible transitional period be no higher than the Solvency Capital Requirement and no lower than the sum of the Minimum Capital Requirement and fifty per cent of the difference between the Solvency Capital Requirement and the Minimum Capital Requirement. The transitional requirements should encourage undertakings to move towards compliance with the particular requirements of the new regime as soon as possible.

- (31) Since the objectives of this Directive, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting policy holders and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive should not go beyond what is necessary in order to achieve those objectives.
- (32) The Commission should, by 1 January 2014, report to the European Parliament and to the Council on the submission by the ESA of the draft technical standards provided for in this Directive and present any appropriate proposals.
- (33) Directives 2003/71/EC and 2009/138/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/71/EC is amended as follows:

- (1) In Article 5(4), the third subparagraph is replaced by the following:

"Where the final terms of the offer are neither included in the base prospectus, nor in a supplement, the final terms shall be made available to investors and filed with the competent authority of the home Member State, as well as communicated, by the issuer, offeror or person asking for the admission to trading on a regulated market, to the competent authority of the host Member State(s) and to the European Securities and Markets Authority (ESMA) when each public offer is made as soon as practicable and, where possible, in advance of the beginning of the public offer or admission to trading. The final terms shall only contain information that relates to the securities note and shall not be used to supplement the base prospectus. Article 8(1)(a) shall apply in such cases."

- (2) Article 11(3) is replaced by the following:

"3. Powers are delegated to the Commission to adopt regulatory technical standards to specify the information to be incorporated by reference.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation .../... [ESMA].

ESMA shall develop draft regulatory technical standards for submission to the Commission by 1 January 2014 at the latest."

- (3) Article 13(7) is replaced by the following:

"7. Powers are delegated to the Commission to adopt regulatory technical standards to specify the procedures for the approval of the prospectus and the conditions in accordance with which time limits may be adjusted.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Article 10 to 14 of Regulation .../... [ESMA].

ESMA shall develop draft regulatory technical standards for submission to the Commission by 1 January 2014 at the latest."

- (4) Article 14(8) is replaced by the following:

"8. Powers are delegated to the Commission to adopt regulatory technical standards specify the provisions relating to the publication of the prospectus in paragraphs 1 to 4.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation .../... [ESMA].

ESMA shall develop draft regulatory technical standards for submission to the Commission by 1 January 2014 at the latest."

(5) Article 15(7) is replaced by the following:

"7. Powers are delegated to the Commission to specify the provisions concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and specify the provisions laid down in paragraph 4.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation .../... [ESMA].

ESMA shall develop draft regulatory technical standards for submission to the Commission by 1 January 2014 at the latest."

Article 2

Directive 2009/138/EC is amended as follows:

(1) Article 17(3) is replaced by the following:

"3. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, relating to the extension of the list of forms set out in Annex III."

(2) Article 31 is amended as follows:

(a) Paragraph 4 is replaced by the following:

"4. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, relating to paragraph 2 specifying the key aspects on which aggregate statistical data are to be disclosed, and the format, structure, contents list and publication date of the disclosures."

(b) The following paragraph 5 is added:

"5. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of paragraph 2 as supplemented by the delegated acts referred to in paragraph 4 concerning the matters covered by those delegated acts, specifically with regard to the templates and structure of the disclosures.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

The European Insurance and Occupational Pensions Authority (EIOPA) shall develop draft implementing technical standards for submission to the Commission by 31 December 2011 at the latest."

(3) In Article 33, the following third paragraph is added:

"Where a request for cooperation in relation to an on-site verification in accordance with this Article has been rejected or has not been acted upon within a reasonable period of time, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that Article."

(4) Article 35 is amended as follows:

(a) Paragraph 6 is replaced by the following::

"6. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the information referred to in paragraphs 1 to 4, with a view to ensuring to the appropriate extent convergence of supervisory reporting."

(b) The following paragraph 7 is added:

"7. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of paragraphs 1 and 4 as supplemented by the delegated acts adopted under paragraph 6, specifically with regard to the templates and procedures for the submission of information to the supervisory authorities. The procedures may include, where appropriate, requirements for approval.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011 at the latest."

(5) Article 37 is amended as follows:

(a) paragraph 6 is replaced with the following:

"6. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down further specifications for the circumstances under which a capital add-on may be imposed and the methodologies for the calculation thereof and the process of decisions to set, calculate and remove capital add-ons."

(b) The following paragraph 7 is added:

"7. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of this Article as supplemented by the delegated acts referred to in paragraph 6 concerning the matters covered by those delegated acts, specifically with regard to the process of decisions to set, calculate and remove capital add-ons referred to in the delegated acts adopted under paragraph 6.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

(6) In Article 38(2), the following subparagraph is added:

"Where a request for cooperation in relation to an on-site inspection in accordance with this paragraph has been rejected or has not been acted upon within a reasonable period of time, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that Article."

(7) Article 50 is replaced by the following:

*"Article 50
Delegated acts*

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, to further specify the following:
 - (a) the elements of the systems referred to in Articles 41, 44, 46 and 47, and in particular the areas to be covered by the asset–liability management and investment policy, as referred to in Article 44(2), of insurance and reinsurance undertakings;

- (b) the functions referred to in Articles 44, 46, 47 and 48;
 - (c) the requirements set out in Article 42 and the functions subject thereto;
 - (d) the conditions under which outsourcing, in particular to service providers located in third countries, may be performed.
2. Where necessary to ensure appropriate convergence of the assessment referred to in point (a) of Article 45(1), the Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, to further specify the elements of that assessment."
- (8) In the third subparagraph of Article 51(2) the date "31 October 2017" is replaced by the date "31 December 2017".
- (9) Article 52 is replaced by the following:

"Article 52

Information for and reports by the European Insurance and Occupational Pensions Authority

1. Member States shall require the supervisory authorities to provide the following information to EIOPA on an annual basis:
- (a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the supervisory authority during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows:
 - (i) for all insurance and reinsurance undertakings;
 - (ii) for life insurance undertakings;
 - (iii) for non-life insurance undertakings;
 - (iv) for insurance undertakings pursuing both life and non-life activities;
 - (v) for reinsurance undertakings;
 - (b) for each of the disclosures set out in point (a) of this paragraph, the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.
2. EIOPA shall publicly disclose, on an annual basis, the following information:
- (a) for all Member States together, the total distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, for each of the following:
 - (i) all insurance and reinsurance undertakings;
 - (ii) life insurance undertakings;

- (iii) non-life insurance undertakings;
 - (iv) insurance undertakings pursuing both life and non-life activities;
 - (v) reinsurance undertakings;
 - (b) for each Member State separately, the distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, covering all insurance and reinsurance undertakings in that Member State;
 - (c) for each of the disclosures referred to in points (a) and (b) of this paragraph, the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.
3. EIOPA shall provide the information referred to in paragraph 2 to the European Parliament, the Council and the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States."
- (10) Article 56 is replaced by the following:

"Article 56

Solvency and financial condition report: delegated acts and implementing acts

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, further specifying the information which must be disclosed and the means by which this is to be achieved.

Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 53, 54 and 55 as supplemented by the delegated acts referred to in this Article concerning the matters covered by those delegated acts, specifically with regard to the templates for the public disclosure .

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011 at the latest. "

- (11) Article 58(8) is replaced by the following:

"8. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, further specifying the adjustments of the criteria set out in Article 59(1), in order to take account of future developments and to ensure the uniform application of Articles 57 to 63."

- (12) In Article 69, the second paragraph is replaced by the following:

"Such disclosure shall be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Articles 65 and Article 68(1), and information obtained by means of on-site verification referred to in Article 33, may only be disclosed with the express consent of the supervisory authority from which the information originated or the supervisory authority of the Member State in which the on-site verification was carried out."

(13) Article 71 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. Member States shall ensure that in the exercise of their duties supervisory authorities have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

- (a) the supervisory authorities participate in the activities of the EIOPA;
- (b) the supervisory authorities follow the guidelines and recommendations of the EIOPA and provide reasons where they fail to do so;
- (c) national mandates conferred on the supervisory authorities do not inhibit the performance of their duties as members of the EIOPA under this Directive."

(b) Paragraph 3 is deleted.

(14) Article 75 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, to set out the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1."

(b) The following paragraph 3 is added:

"3. Powers are conferred on the Commission to adopt implementing technical standards to:

- (a) determine the conditions of application of paragraph 1 as supplemented by the delegated acts referred to in paragraph 2 in relation to the matters covered by those delegated acts, as regards:
 - (i) valuation approaches where quoted market prices are either not available or not consistent with paragraphs 1 and 2;

- (ii) the consistency of international accounting standards as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 with the valuation approach set out in this Article;
- (b) determine the conditions of application of paragraph 1 as supplemented by the delegated acts referred to in paragraph 2, in relation to the matters covered by those delegated acts, specifically with regard to the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1 including alternative valuation methods to be used where international accounting standards, as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council¹¹, are either temporarily or permanently not consistent with the valuation approach set out in this Article.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

- (15) The following Article 77a is inserted:

Article 77a

"Technical information produced by the European Insurance and Occupational Pensions Authority

EIOPA shall publish technical information including the relevant risk-free interest rate term structure. Where EIOPA observes an illiquidity premium in the financial markets in periods of stressed liquidity, information relating to the illiquidity premium, including its size shall also be published. EIOPA shall carry out the observation of the illiquidity premium and the derivation of the information on a transparent, objective and reliable basis. Information for all these purposes shall be derived according to methods and assumptions which may include formulae, or determinations made by EIOPA.

The information referred to in the first paragraph shall be published for each relevant currency on at least a quarterly basis in a manner which is consistent with the methodologies referred to in Article 86."

- (16) Article 86 is replaced by the following:

¹¹ OJ L 243, 11.9.2002, p. 1.

*"Article 86
Delegated acts and implementing acts*

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the following:

- (a) actuarial and statistical methodologies to calculate the best estimate referred to in Article 77(2);
- (b) the methodologies, principles and techniques for the determination of the relevant risk-free interest rate structure to be used to calculate the best estimate referred to in Article 77(2);
- (c) the circumstances in which technical provisions shall be calculated as a whole, or as a sum of a best estimate and a risk margin, and the methods to be used in the case where technical provisions are calculated as a whole;
- (d) the methods and assumptions to be used in the calculation of the risk margin including the determination of the amount of eligible own funds necessary to support the insurance and reinsurance obligations and the calibration of the Cost-of-Capital rate;
- (e) the lines of business on the basis of which insurance and reinsurance obligations are to be segmented in order to calculate technical provisions;
- (f) the standards to be met with respect to ensuring the appropriateness, completeness and accuracy of the data used in the calculation of technical provisions, and the specific circumstances in which it would be appropriate to use approximations, including case-by-case approaches, to calculate the best estimate;
- (g) the methodologies to be used when calculating the counterparty default adjustment referred to in Article 81 designed to capture expected losses due to default of the counterparty;
- (h) where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial and statistical methods referred to in points (a) and (d) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings including captive insurance and reinsurance undertakings;
- (i) the detailed criteria for the elements of technical information, the calculation methods and assumptions, and where appropriate the formulae and determinations, according to which the information is to be derived by EIOPA as referred to in Article 77a..

Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Article 77(2) as supplemented by the delegated acts referred to in points (a) to (h) of the first paragraph of this Article, concerning the matters covered by those delegated acts.

The implementing technical standards referred to in the first paragraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

(17) Article 92 is amended as follows:

(a) The title is replaced by the following:

*"Article 92
Delegated acts and implementing acts"*

(b) Paragraph 1 is replaced by the following:

"1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the following:

- (a) the criteria and procedure for granting supervisory approval of ancillary own funds in accordance with Article 90;
- (b) the treatment of participations, within the meaning of the third subparagraph of Article 212(2), in financial and credit institutions with respect to the determination of own funds."

(c) Paragraph 3 is replaced by the following:

"3. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of Article 90 as supplemented by the delegated acts referred to in paragraph 1(a) of this Article concerning the matters covered by those delegated acts, specifically with regard to the procedure to be followed for granting supervisory approval of ancillary own funds.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

(18) Article 97 is replaced by the following:

*"Article 97
Delegated acts and implementing acts*

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the following:
 - (a) a list of own-fund items, including those referred to in Article 96, deemed to fulfil the criteria, set out in Article 94, which contains for each own-fund item a precise description of the features which determined its classification;
 - (b) the methods to be used by supervisory authorities, when approving the assessment and classification of own-fund items which are not covered by the list referred to in point (a);

The Commission shall regularly review and, where appropriate update, the list referred to in point (a) of paragraph 1 in light of market developments.

2. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 93 to 96 as supplemented by the delegated acts referred to in paragraph 1 of this Article, concerning the matters covered by those delegated acts, specifically with regard to the classification methods.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

(19) Article 99 is replaced by the following:

*"Article 99
Delegated acts and implementing acts*

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down:
 - (a) the quantitative limits referred to in Article 98(1) and (2);
 - (b) the adjustments that should be made to reflect the lack of transferability of those own-fund items that can only be used to cover losses arising from a particular segment of liabilities or from particular risks (ring-fenced funds).
2. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Article 98 as supplemented by the delegated acts referred to in paragraph 1 of this Article concerning the matters covered by those delegated acts, specifically with regard to adjustments in relation to ring-fenced funds.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

- (20) The following Article 109a is inserted:

*"Article 109a
Harmonised technical inputs to standard formula: role of European Insurance and
Occupational Pensions Authority*

1. For the purposes of evaluating risk mitigation techniques as referred to in Article 101(5) facilitating the calculation of the market risk module referred to in Article 105(5) and, where appropriate, facilitating the counterparty default risk module referred to in Article 105(6), EIOPA shall:
 - (a) assess the eligibility of external credit assessment institutions and allocate their credit assessments to an objective scale of credit quality steps;
 - (b) publish lists of regional governments and local authorities, exposures to whom are to be treated as exposures to central government;
 - (c) specify the equity index referred to in Article 106(2), calculate the symmetric adjustment referred to in Article 106 and publish both sets of information on a regular basis;
 - (d) specify the adjustments to be made for currencies pegged to the euro in the currency risk sub-module referred to in Article 105(5).
2. For the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 105(4), EIOPA shall calculate and publish standard deviations in relation to specific national legislative measures of Member States which permit

the sharing of claims payments in respect of health risk amongst insurance and reinsurance undertakings and which meet specified criteria."

(21) Article 111 is replaced by the following:

*"Article 111
Delegated acts and implementing acts"*

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, providing for the following:
 - (a) a standard formula in accordance with the provisions of Articles 101 and 103 to 109;
 - (b) any sub-modules necessary or covering more precisely the risks which fall under the respective risk modules referred to in Article 104 as well as any subsequent updates;

- (c) the methods, assumptions and standard parameters to be used when calculating each of the risk modules or sub-modules of the Basic Solvency Capital Requirement laid down in Articles 104, 105 and 304, the symmetric adjustment mechanism and the appropriate period of time, expressed in the number of months, as referred to in Article 106, and the appropriate approach for integrating the method referred to in Article 304 in the Solvency Capital Requirement as calculated in accordance with the standard formula;
- (d) the correlation parameters, including, where necessary, those set out in Annex IV, and the procedures for updating those parameters;
- (e) where insurance and reinsurance undertakings use risk-mitigation techniques, the methods and assumptions to be used to assess the changes in the risk profile of the undertaking concerned and to adjust the calculation of the Solvency Capital Requirement;
- (f) the qualitative criteria that the risk-mitigation techniques referred to in point (e) must fulfil in order to ensure that the risk has been effectively transferred to a third party;
- (g) the methods and parameters to be used when assessing the capital requirement for operational risk set out in Article 107, including the percentage referred to in Article 107(3);
- (h) the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings related to ring-fenced funds;
- (i) the method to be used when calculating the adjustment for the loss-absorbing capacity of technical provisions or deferred taxes, as laid down in Article 108;
- (j) the subset of standard parameters in the life, non-life and health underwriting risk modules that may be replaced by undertaking-specific parameters as set out in Article 104(7);
- (k) criteria in relation to the standardised methods to be used by the insurance or reinsurance undertaking to calculate the undertaking-specific parameters referred to in point (j), and any criteria with respect to the completeness, accuracy, and appropriateness of the data used that must be met before supervisory approval is given together with the procedure to be followed for such approval;
- (l) the simplified calculations provided for specific sub-modules and risk modules, as well as the criteria that insurance and reinsurance undertakings, including captive insurance and reinsurance undertakings, shall be required to fulfil in order to be entitled to use each of those simplifications, as set out in Article 109;
- (m) the approach to be used with respect to related undertakings within the meaning of Article 212 in the calculation of the Solvency Capital Requirement, in particular the calculation of the equity risk sub-module referred to in

Article 105(5), taking into account the likely reduction in the volatility of the value of those related undertakings arising from the strategic nature of those investments and the influence exercised by the participating undertaking on those related undertakings;

- (n) the detailed criteria for the eligibility of external credit assessment institutions and for the association of credit assessments to a scale of credit quality referred to in Article 109a(1)(a);
 - (o) the detailed criteria for the equity index referred to in Article 109a(1)(c) ;
 - (p) the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module referred to in Article 109a(1)(d);
 - (q) the detailed criteria that the national legislative measures arrangements shall meet, and the requirements for the calculation of the standard deviation for the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 109a(2)
2. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down quantitative limits and asset eligibility criteria. Those delegated acts shall apply to assets covering technical provisions, excluding assets held in respect of life insurance contracts where the investment risk is borne by the policy holders. Those measures shall be reviewed by the Commission in the light of developments in the standard formula and financial markets.
3. Powers are conferred on the Commission to adopt implementing technical standards to determine:
- (a) the conditions of application of Articles 101 to 110 as supplemented by the delegated acts referred to in paragraph 1(a) to (m), concerning the matters covered by those delegated acts; and
 - (b) the standardised methods to be used to calculate the undertaking specific parameters as referred to in paragraph 1(j).

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

- (22) Article 114 is replaced by the following:

*" Article 114
Delegated acts and implementing acts*

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, setting out the following:

- (a) the procedure to be followed for the approval of an internal model;
- (b) the adaptations to be made to the standards set out in Articles 120 to 125 in light of the limited scope of the application of the partial internal model;
- (c) the procedures to approve major changes to an internal model and changes to the policy for changing an internal model referred to in Article 115;
- (d) approaches, including, where appropriate, default techniques which allow a partial internal model to be fully integrated into the Solvency Capital Requirement standard formula and requirements for the use of alternative techniques.

powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 112 to 126 as supplemented by the delegated acts referred to in paragraph 1 of this Article, concerning the matters covered by those delegated acts, specifically with regard to the procedures, adaptations and alternative techniques referred to in that paragraph . The implementing technical standards referred to in the second subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA]. EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

- (23) Article 127 is replaced by following:

*"Article 127
Delegated acts and implementing acts*

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, with respect to Articles 120 to 126, regarding the use of internal models throughout the Union.

Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of Articles 120 to 126, as supplemented by the delegated acts referred to in the first paragraph, concerning the matters covered by those delegated acts.

The implementing technical standards referred to in the second paragraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA]. EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

- (24) Article 129(1)(d)(iii) is replaced by the following:

"(iii) EUR 3 200 000 for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be not less than EUR 1 100 000,"

- (25) In the second subparagraph of Article 129(3) the date "31 October 2014" is replaced by the date "31 December 2014".

(26) In Article 129(5), the date "31 October 2017" is replaced by the date "31 December 2017",

(27) Article 130 is replaced by the following:

*"Article 130
Delegated acts*

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the calculation of the Minimum Capital Requirement, referred to in Articles 128 and 129."

(28) In the first paragraph of Article 131, the dates "31 October 2012" and "31 October 2013" are replaced by the dates "31 December 2012" and "31 December 2013 respectively".

(29) Article 135 is replaced by the following:

*"Article 135
Delegated acts*

1. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying qualitative requirements in the following areas:

- (a) the identification, measurement, monitoring, managing and reporting of risks arising from investments in relation to the first subparagraph of Article 132(2);
- (b) the identification, measurement monitoring, managing and reporting of specific risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 132(4).

2. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down:

- (a) the requirements that need to be met by undertakings that repackage loans into tradable securities and other financial instruments (originators) in order for an insurance or reinsurance undertaking to be allowed to invest in such securities or instruments issued after 1 January 2011, including requirements that ensure that the originator retains a net economic interest of no less than 5 %;
- (b) qualitative requirements that must be met by insurance or reinsurance undertakings that invest in such securities or instruments;
- (c) the consequences of breaching the requirements laid down under points (a) and (b) of this paragraph, including, where appropriate, and notwithstanding Article 101(3), measures which impose a proportionate additional capital charge."

(30) Article 138 (4) is amended as follows:

(a) The first subparagraph shall be replaced by the following:

"In the event of an exceptional fall in financial markets, as determined by EIOPA in accordance with this paragraph, the supervisory authority may extend the period set out in the second sub-paragraph of paragraph 3 by an appropriate period of time taking into account all relevant factors."

(b) The following fourth and fifth sub-paragraphs are added:

"Without prejudice to the powers of the EIOPA under Article 18 of Regulation .../..., for the purposes of this paragraph, EIOPA shall, following a request by the supervisory authority concerned, address an individual decision to the requesting supervisory authority declaring the existence of an exceptional fall in financial markets. An exceptional fall in financial markets exists, where one or more insurance or reinsurance undertakings are unable to meet one of the requirements set out in paragraph 3 of this Article within the time period defined therein as a consequence of a fall in financial markets which is unforeseen, sharp and steep, which is different from the downturns that occur as part of the economic cycle and which has already affected seriously and adversely the financial situation of one or more insurance and reinsurance undertakings collectively representing a substantial part of the insurance or reinsurance market in one or more Member States.

EIOPA shall at least once a month review whether the conditions referred to in the fourth subparagraph still apply as of the date of the review and repeal that decision where one or more of the conditions referred to in the fourth subparagraph on which the decision was based is no longer fulfilled. To this end EIOPA shall address an individual decision to the supervisory authority concerned declaring that an exceptional fall in financial markets has ceased to exist.."

(31) Article 143 is replaced by the following:

*" Article 143
Delegated acts*

1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the procedures to be followed by EIOPA when determining the existence of an exceptional fall in the financial markets, and the factors to be taken into account for the purpose of the application of Article 138(4) including the maximum appropriate period of time, expressed in total number of months, which shall be the same for all insurance and reinsurance undertakings as referred to in the first subparagraph of Article 138(4).
2. Where it is necessary to enhance convergence, the Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down further specifications with respect to the recovery plan referred to in Article 138(2), the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects."

(32) The following subparagraph is inserted after the first subparagraph of Article 155(3):

"In addition, the supervisory authority of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that Article."

- (33) The following subparagraph is inserted after the first subparagraph of Article 158(2):

"In addition, the supervisory authority of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that article."

- (34) Article 172 is amended as follows:

- (35) (a) paragraph 1 is replaced by the following:

"1. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the criteria to assess whether the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in Title I..."

- (b) the following new paragraphs 4, 5 and 6 are added:

"4. By way of derogation from paragraph 3 and the second subparagraph of Article 134(1), the same treatment as in Article 172(3) and the second subparagraph of Article 134(1) shall be accorded, for a transitional period, to reinsurance contracts concluded with undertakings having their head office in a third country the solvency regimes of which are unlikely, by 31 December 2012, to fully meet the criteria for assessing equivalence, referred to in paragraph 1. The transitional period shall last for a maximum of 5 years from the date referred to in the first sub-paragraph of Article 309(1). This derogation shall only apply where the Commission has made a decision in accordance with paragraph 6 that specified conditions have been met by the third country.

5. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying in relation to paragraph 4 the length of the transitional period which may be shorter than the maximum of 5 years and the conditions which are to be met by the third country. Those conditions shall cover commitments given by the supervisory authorities, their convergence to an equivalent regime over a set period of time, the existing or intended content of the regime, and matters of cooperation, exchange of information and professional secrecy obligations.

6. The Commission may, in accordance with the regulatory procedure referred to in Article 301(2), decide in respect of solvency regimes referred to in paragraph 4 that the conditions set out in Article 174(4) and the delegated act have been met by the third country.

Those decisions shall be regularly reviewed."

(36) Article 210 (2) is replaced by the following:

"2. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the provisions of paragraph 1 with respect to the monitoring, management and control of risks arising from finite reinsurance activities."

(37) Article 211 is amended as follows

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

"2. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the following:

- (a) the scope of authorisation;
- (b) mandatory conditions to be included in all contracts issued;
- (c) fit and proper requirements as referred to in Article 42 of the persons running the special purpose vehicle;
- (d) fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;
- (e) sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements;
- (f) accounting, prudential and statistical information requirements;
- (g) solvency requirements.

The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, laying down the procedures for supervisory approval of special purpose vehicles and, where the special purpose vehicle which assumes risk from an insurance or reinsurance undertaking is established in a Member State which is not the Member State in which the insurance or reinsurance undertaking is authorised, the procedures for cooperation and exchange of information between supervisory authorities.

3. Special purpose vehicles authorised prior to 31 December 2012 shall be subject to the law of the Member State that authorised the special purpose vehicle. However, any new activity commenced by such a special purpose vehicle after that date shall be subject to paragraphs 1 and 2."

(b) The following paragraph 4 is added:

"4. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of this Article as supplemented by the delegated acts referred to in paragraph 2 concerning the matters covered by those delegated acts, specifically with regard to the procedure to be followed for granting supervisory approval of special purpose vehicles and the procedures for cooperation and exchange of information between supervisory authorities.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

(38) Article 216(7) is replaced by the following:

"7. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the circumstances under which the decision referred to in paragraph 1 can be made."

(39) Article 217(3) is replaced by the following:

"3. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the circumstances under which the decision referred to in paragraph 1 can be made."

(40) In Article 227(2), the second subparagraph is replaced by the following:

"In so doing, the group supervisor shall consult the other supervisory authorities concerned and EIOPA before taking a decision on equivalence."

(41) Article 227(3) is replaced by the following:

"3. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the criteria to assess whether the solvency regime in a third country is equivalent to that laid down in Title I, Chapter VI."

(42) In Article 227 the following paragraphs 6 and 7 are added:

"6. By way of derogation from the second subparagraph of paragraph 1, Member States may for a transitional period provide that the group solvency calculation take into account, as regards the undertaking referred to in that subparagraph, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned. The transitional period shall last for a maximum of 5 years from the date referred to in the first sub-paragraph of Article 309(1). This derogation shall only apply where the Commission has made a decision in accordance with paragraph 7 that specified conditions have been met by the third country.

7. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying in relation to paragraph 6 the length of the transitional period which may be shorter than the maximum of 5 years and the conditions which are to be met by the third country. Those conditions shall cover commitments given by the supervisory authorities, their convergence to an equivalent regime over a set period of time, the existing or

intended content of the regime, and matters of cooperation, exchange of information and professional secrecy obligations.

8. The Commission may adopt a decision in respect of solvency regimes of third countries, referred to in paragraph 6 that the conditions set out in paragraph 4 and the delegated act have been met by the third country.

Those decisions shall be adopted after consultation with the European Insurance and Occupational Pensions Committee and in accordance with the regulatory procedure referred to in Article 301(2). The decisions shall be reviewed regularly."

(43) Article 231(3) to (6) are replaced by the following:

"3. During the period referred to in paragraph 2, the group supervisor and any of the other supervisory authorities concerned may consult EIOPA. EIOPA shall also be consulted where the participating undertaking so requests.

Where EIOPA is consulted, all supervisory authorities concerned shall be informed and the period referred to in paragraph 2 shall be extended by two months.

4. The group supervisor shall provide the applicant with a document setting out the fully reasoned joint decision referred to in paragraph 2.

Where EIOPA has been consulted in accordance with paragraph 3, the supervisory authorities concerned shall duly consider such advice before taking their joint decision. The group supervisor shall provide the applicant with a document setting out the fully reasoned joint decision and an explanation of any significant deviation from the advice adopted by EIOPA.

5. In the absence of a joint decision within the periods set out in paragraphs 2 and 3 respectively, the group supervisor shall make its own decision on the application.

In making its decision, the group supervisor shall duly take into account the following:

- (a) any views and reservations of the other supervisory authorities concerned expressed during the applicable period;
- (b) where EIOPA has been consulted, its advice.

The group supervisor shall provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision and an explanation of any significant deviation from any advice adopted by EIOPA.

That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

6. If, at the end of the periods referred to in paragraphs 2 and 3, respectively, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation .../... [EIOPA], the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article

19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision.

The periods referred to in paragraphs 2 and 3 respectively shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the periods referred to in paragraphs 2 and 3 respectively or after a joint decision has been reached."

(44) Article 234 is replaced by the following:

*" Article 234
Delegated acts*

The Commission shall adopt delegated acts in accordance with Article 301a and subject to the conditions of Articles 301b and 301c specifying the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233 to ensure uniform application within the Union."

(45) Article 237 is amended as follows:

(a) Paragraphs 3, 4 and 5 are replaced by the following:

"3. During the period referred to in paragraph 2, in the case of diverging views concerning the approval of the application referred to in paragraph 1, the group supervisor or any of the other supervisory authorities concerned may consult EIOPA. Where EIOPA is consulted, all supervisory authorities concerned shall be informed and the period referred to in paragraph 2 shall be extended by one month.

Where EIOPA has been consulted, the supervisory authorities concerned shall duly consider such advice before taking their joint decision.

4. The supervisory authority having authorised the subsidiary shall provide to the applicant the joint decision referred to in paragraphs 2 and 3, shall state the full reasons and shall, where EIOPA has been consulted, contain an explanation of any significant deviation from the advice adopted by EIOPA. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

5. In the absence of a joint decision of the supervisory authorities concerned within the periods set out in paragraphs 2 and 3, the group supervisor shall take its own decision with regard to the application.

In taking its decision, the group supervisor shall duly consider the following:

- (a) any views and reservations of the supervisory authorities concerned expressed during the applicable period;
- (b) any reservations of the other supervisory authorities within the college of supervisors expressed during the applicable period;

(c) where the EIOPA has been consulted, its advice.

The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned and any advice of EIOPA. The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision."

(b) The following paragraph 6 is added:

"6. Where, at the end of the periods referred to in paragraphs 2 and 3 of this Article, respectively, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation .../... [EIOPA], the supervisory authority concerned shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision.

The periods referred to in paragraphs 2 and 3, respectively, shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation. EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the periods referred to in paragraphs 2 and 3, respectively, or after a joint decision has been reached."

(46) Article 238(5) is replaced by the following:

"5. Where the supervisory authority and the group supervisor disagree, either supervisor may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../... [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within two months of such referral. The matter shall not be referred to EIOPA after the end of the one month period referred to in this subparagraph or after an agreement has been reached within the college in accordance with paragraph 4 of this Article.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision.

The decision shall state the full reasons on which it is based.

The decision shall be submitted to the subsidiary and to the college of supervisors."

(47) In Article 239 the following paragraph 4 is added:

"4. Where the supervisory authority and the group supervisor disagree on the approval of the recovery plan at the end of the four months period referred to in paragraph 1 of this Article or on the approval of the proposed measures at the end of the one month period referred to in paragraph 2 of this Article, either supervisor may, at the end of the applicable period, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation .../... [EIOPA]. In that case,

EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral. The matter shall not be referred to EIOPA after the end of the applicable period referred to in this subparagraph or after an agreement has been reached within the college in accordance with the second subparagraph of paragraph 1 or the second subparagraph of paragraph 2 of this Article.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that regulation, and shall take its final decision in conformity with EIOPA's decision.

The decision shall state the full reasons on which it is based.

The decision shall be submitted to the subsidiary and to the college of supervisors."

(48) Article 241 is replaced by the following:

*" Article 241
Subsidiaries of an insurance or reinsurance undertaking:
delegated acts*

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying:

- (a) the criteria to be applied when assessing whether the conditions stated in Article 236 are satisfied;
- (b) the criteria to be applied when assessing what should be considered an emergency situation under Article 239(2);
- (c) the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 237 to 240."

(49) In Article 242(1), the date "31 October 2014" is replaced by the date "31 December 2014".

(50) In Article 242(2), the date "31 October 2015" is replaced by the date "31 December 2015".

(51) Article 244 (4) is replaced by the following:

"4. The Commission may adopt delegated acts in accordance with Article 301a and subject to the conditions of Articles 301b and 301c as regards the definition and identification of a significant risk concentration and the reporting on such a risk concentration for the purposes of paragraphs 2 and 3."

(52) Article 245 (4) is replaced by the following:

"4. The Commission may adopt delegated acts in accordance with Article 301a and subject to the conditions of Articles 301b and 301c as regards the definition and identification of a significant intra-group transaction and the reporting on such an intra-group transaction for the purposes of paragraphs 2 and 3."

(53) Article 247(4) to (7) is replaced by the following:

"4. During the three-month period referred to in the third subparagraph of paragraph 3, any of the supervisory authorities concerned may request that EIOPA be consulted. Where EIOPA is consulted, that period shall be extended by two months.

5. Where EIOPA is consulted, the supervisory authorities concerned shall duly take into account EIOPA's advice before taking their joint decision. The joint decision shall state the full reasons and shall contain an explanation of any significant deviation from any advice given by EIOPA.

6. In the absence of a joint decision derogating from the criteria set out in paragraph 2 of this Article, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2 of this Article. However, if at the end of the periods set out in paragraphs 3 and 4 of this Article any of the supervisors concerned have referred the matter to EIOPA in accordance with Article 19 of Regulation .../... [EIOPA], they shall await the decision of EIOPA.

The periods referred to in paragraphs 3 and 4, respectively, shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation. EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after a joint decision has been reached.

The task of group supervisor shall be exercised by the supervisory authority identified in the decision taken by EIOPA. The decision shall be submitted to the group and to the college of supervisors.

7. EIOPA shall inform the European Parliament, the Council and the Commission of any major difficulties with the application of paragraphs 2, 3 and 6 on at least an annual basis.

In the event that any major difficulties arise from the application of the criteria set out in paragraphs 2 and 3 of this Article, the Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying those criteria."

(54) Article 248 is amended as follows:

(a) The following subparagraph is added to paragraph 2:

"Where the group supervisor fails to carry out the tasks referred to in paragraph 1 or where the members of the college do not cooperate to the extent required in this paragraph, any of the supervisory authorities concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation

.../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by Article 11 of that Regulation."

- (b) The second and third subparagraphs of paragraph 4 are replaced by the following:

"Where diverging views concerning the coordination arrangements arise, any member of the college of supervisors may refer the matter to EIOPA.

After consulting the supervisory authorities concerned, the group supervisor shall duly consider any advice produced by EIOPA within two months of receipt thereof before taking its final decision. The decision shall state the full reasons and shall contain an explanation of any significant deviation from any advice given by EIOPA. The group supervisor shall transmit the decision to the other supervisory authorities concerned."

- (c) Paragraphs 6 and 7 are replaced by the following:

"6. Powers are conferred on the Commission to adopt implementing technical standards concerning the operational functioning of colleges.

Those implementing technical standards shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA]. EIOPA shall develop draft implementing technical standards by 31 December 2011 and develop reviewed draft standards for submission to the Commission at least every three years.

7. The Commission shall adopt delegated acts in accordance with Article 301a and subject to the conditions of Articles 301b and 301c for the coordination of group supervision for the purposes of paragraphs 1 to 6, including the definition of "significant branch".

- (55) In Article 249, the following paragraph 1a is inserted:

"1a. Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time, the supervisory authorities may refer the matter to EIOPA and request its assistance.

Where the matter is referred to EIOPA, without prejudice to the provisions of Article 258 TFEU, EIOPA may act in accordance with the powers conferred on it by Article 19 of Regulation (EU) No .../2010 [EIOPA]."

- (56) Article 249 is amended as follows:

- (a) Paragraph 3 is replaced by the following:

"3. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, determining the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to

other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned.

The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting."

(b) The following paragraph 4 is added:

"4. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of this Article as supplemented by the delegated acts referred to in paragraph 3 of this Article concerning the matters covered by those delegated acts, specifically with regard to the templates and procedures for the submission of information to the group supervisor as well as the procedure for the cooperation and the exchange of information between supervisory authorities as laid down in this Article.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards to the Commission by 31 December 2011."

(57) Article 254(2) is replaced by the following:

" 2. Member States shall provide that their authorities responsible for exercising group supervision shall have access to any information relevant for the purposes of that supervision regardless of the nature of the undertaking concerned. Articles 35 and 308a(1) shall apply *mutatis mutandis*."

(58) In Article 255(2), the following fourth subparagraph is added:

"Where the request to another supervisory authority to have a verification carried out in accordance with this paragraph has been rejected or has not been acted within a reasonable period of time, or where a request of the supervisory authority which made the request to participate in the verification under the third subparagraph has been rejected or has not been acted upon within a period of reasonable time, the requesting authority may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation .../2010 [EIOPA]. In that case, EIOPA may act in accordance with the powers conferred on it by that Article."

(59) Article 256 is amended as follows:

(a) Paragraph 1 is replaced by the following:

" 1. Member States shall require participating insurance and reinsurance undertakings or insurance holding companies to disclose publicly, on an annual basis, a

report on the solvency and financial condition at the level of the group. Articles 51, 53, 54, 55 and 308a(4) shall apply *mutatis mutandis*."

(b) Paragraph 4 is replaced by the following:

"4. The Commission shall adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, further specifying the information which must be disclosed and the means by which this is to be achieved as regards the single solvency and financial condition report."

(c) The following paragraph 5 is added:

"5. Powers are conferred on the Commission to adopt implementing technical standards to determine the conditions of application of this Article as supplemented by the delegated acts referred to in paragraph 4 of this Article, concerning the matters covered by those delegated acts, specifically with regard to the templates for the disclosure of the group solvency and financial report as laid down in this Article.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation .../... [EIOPA].

EIOPA shall develop draft implementing technical standards for submission to the Commission by 31 December 2011."

(60) Article 258 (3) is replaced by the following:

"The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, for the coordination of enforcement measures referred to in paragraphs 1 and 2."

(61) Article 259 is replaced by the following:

*" Article 259
Reporting of EIOPA*

1. EIOPA shall report to the European Parliament annually in accordance with Article 35 of Regulation.../...[EIOPA]
2. EIOPA shall report, inter alia, on all relevant and significant experiences of the supervisory activities and cooperation between supervisors in the framework of Title III, and, in particular:
 - (a) the process of the nomination of the group supervisor, the number of group supervisors and geographical spread;
 - (b) the working of the college of supervisors, in particular the involvement and commitment of supervisory authorities where they are not the group supervisor.
3. EIOPA may, for the purposes of paragraph 1 of this Article, also report on the main lessons drawn from the reviews referred to in Article 248(6), where appropriate."

(62) Article 260 is amended as follows:

(a) In paragraph 1, the second subparagraph is replaced by the following:

"The verification shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 247(2) were to apply, at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Union or on its own initiative, unless the Commission had concluded previously in respect of the equivalence of the third country concerned. In so doing, that supervisory authority shall consult the other supervisory authorities concerned and EIOPA, before taking a decision."

(b) Paragraph 2 is replaced by the following:

"2. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying the criteria to assess whether the prudential regime in a third country for the supervision of groups is equivalent to that laid down in this Title.

(c) the following paragraph 4 is added

"4. By way of derogation from Article 261(1), the first paragraph of Article 262(1) and the second paragraph of Article 263, Member States may, for a transitional period, rely on the group supervision exercised by the third-country supervisory authorities. The transitional period shall last for a maximum of 5 years from the date referred to in the first sub-paragraph of Article 309(1). This derogation shall only apply where the Commission has made a decision in accordance with paragraph 5 that specified conditions have been met by the third country. "

(d) the following paragraph 5 is added:

"5. The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, specifying in relation to paragraph 4 the length of the transitional period which may be shorter than the maximum of 5 years and the conditions which are to be met by the third country. Those conditions shall cover commitments given by the supervisory authorities, their convergence to an equivalent regime over a set period of time, the existing or intended content of the regime, and matters of cooperation, exchange of information and professional secrecy obligations.

(e) the following paragraph 6 is added:

"6. The Commission may adopt, a decision in respect of prudential regimes of third countries referred to in paragraph 4 that the conditions set out in paragraph 4 and the delegated act have been met by the third country.

Those decisions shall be adopted after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the regulatory procedure referred to in Article 301(2). The decisions shall be reviewed regularly."

- (63) In Article 262 the first subparagraph of paragraph 1 is amended as follows:
- "1. In the absence of equivalent supervision referred to in Article 260, Member States shall apply either of the following to insurance and reinsurance undertakings:
- (64) (a) Articles 218 to 235, Article 244 to 258 and Article 308a(9) *mutatis mutandis*
- (65) (b) one of the methods set out in paragraph 2."
- (66) In the first paragraph of Article 300, the date "31 October 2012" is replaced by the date "31 December 2012".
- (67) Article 301 (3) is deleted.
- (68) The following articles 301a, 301b and 301c are inserted:

*"Article 301a
Exercise of the delegation*

1. The powers to adopt delegated acts referred to in Articles 17, 31, 35, 37, 50, 56, 58, 75, 86, 92, 97, 99, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 249, 256, 258, 260 and 308b shall be conferred on the Commission for a period of 5 years following the entry into force of this Directive.
- The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the 5 year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 301b.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
 3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 301b and 301c..

*Article 301b
Revocation of the delegation*

1. The delegation of power referred to in Articles 17, 31, 35, 37, 50, 56, 58, 75, 86, 92, 97, 99, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 249, 256, 258 260 and 308b may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated power which could be subject to revocation and the reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 301c
Objections to delegated acts

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council, that period shall be extended by one month.
2. If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act."

(69) In Article 304(2), the date "31 October 2015" is replaced by the date "31 December 2015".

(70) The following Article 308a is inserted:

"SECTION 3

Transitional measures specified by delegated acts

Article 308a

Transitional provisions

1. Where the Commission has adopted a delegated act in accordance with Article 308b(1), Article 35(5) shall not apply for a maximum period of five years from the date referred to in the first sub-paragraph of Article 309(1).
2. Where the Commission has adopted a delegated act in accordance with Article 308b(2), the condition referred to in Article 37(1)(a) that the supervisory authority has concluded that the risk profile of the insurance or reinsurance undertaking has deviated significantly from the assumptions underlying the Solvency Capital Requirement as calculated using the standard formula shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article

309(1). Equally, the requirement in Article 37(2) that capital add-ons imposed under point a) of Article 37(1) are to be calculated in such a way so as to ensure the undertaking complies with Article 101(3) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).

3. Where the Commission has adopted a delegated act in accordance with Article 308b(3), Article 41(1) and Article 41(3) shall not apply for a maximum period of 3 years from the date referred to in the first sub-paragraph of Article 309(1).
4. Where the Commission has adopted a delegated act in accordance with Article 308b(4), Article 51(1) shall not apply for a maximum period of 3 years from the date referred to in the first sub-paragraph of Article 309(1).
5. Where the Commission has adopted a delegated act in accordance with Article 308b(5), Article 75(1) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).
6. Where the Commission has adopted a delegated act in accordance with Article 308b(6), Article 76(2), Article 76(3) and Article 76(5) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).
7. Where the Commission has adopted a delegated act in accordance with Article 308b(7), Article 94 shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).
8. Where the Commission has adopted a delegated act in accordance with Article 308b(8), the first paragraph of Article 100, Article 101(3), Article 102, and Article 104 shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1).
9. Where the Commission has adopted a delegated act in accordance with Article 308b(9), Article 218(2) and (3) shall not apply for a maximum period of 10 years from the date referred to in the first sub-paragraph of Article 309(1) .

(71) The following Article 308b is inserted:

Article 308b

Delegated Acts

The Commission may adopt delegated acts, in accordance with Article 301a and subject to the conditions of Articles 301b and 301c, regarding the following :

- (a) with regard to Article 308a(1), specifying the length of the transitional period which may be shorter than the maximum of 3 years, specifying any phasing of the transitional period, and specifying the transitional requirements as to the systems and structures undertakings shall have in place to comply with information required to be provided for supervisory purposes and requiring that insurance and reinsurance undertakings comply at least with the laws,

regulations and administrative provisions related to production of accounts and periodic submission of returns which are adopted pursuant to Article 13 Directive of 2002/83/EC, Article 11 of Directive 84/641/EC and Article 17 of Directive 2005/68/EC.

- (b) with regard to Article 308a(2), specifying the length of the transitional period which may be shorter than 10 years, specifying any phasing of the transitional period, specifying a requirement to take the assumptions underlying a transitional Solvency Capital Requirement referred to in Article 308b(8) rather than the Solvency Capital Requirement into account when concluding whether the conditions for imposing a capital add-on under Article 37(1)(a) are met and specifying the calculation of the capital add-on by reference to the calibration and confidence level attributes of that transitional Solvency Capital requirement rather than those of the standard formula Solvency Capital Requirement;
- (c) with regard to Articles 308a(3), the length of the transitional period which may be shorter than the maximum of 3 years, the phasing of the transitional period and the transitional requirements as to the system of governance and the extent to which the systems, functions, and requirements referred to in Articles 41 to 49 to be complied with by insurance and reinsurance undertakings during the transitional period and requiring that insurance and reinsurance undertakings comply at least with the laws, regulations and administrative provisions requiring sound administrative procedures and internal control which are adopted pursuant to Article 10 of Directive 2002/83/EC, Article 9 of Directive 84/641/EC and Article 15 of Directive 2005/68/EC.
- (d) with regard to Article 308a(4), the length of the transitional period which may be shorter than the maximum of 3 years, any phasing of the transitional period, and any transitional requirements as to the content and timing of the information which must be publicly disclosed by insurance and reinsurance undertakings and requiring that insurance and reinsurance undertakings be at least required to disclose a report containing a high level summary of the information listed in Article 51(1).
- (e) with regard to Article 308a(5) the length of the transitional period which may be shorter than the maximum of 10 years, any phasing of the transitional period, any specification of the assets and liabilities which shall be subject to transitional requirements as to valuation and the transitional requirements as to the methods and assumptions to be used in the valuation of the specified assets and liabilities and requiring that insurance and reinsurance undertakings comply at least with the Member State's laws, regulations and administrative provisions for valuation of such assets and liabilities which were applicable on 31 December 2012;
- (f) with regard to Article 308a(6) , the length of the transitional period which may be shorter than the maximum of 10 years, the phasing of the transitional period and the transitional requirements as to the methodologies and assumptions to be used in the calculation of technical provisions and which will apply during the transitional period and requiring that insurance and reinsurance undertakings comply at least with the laws, regulations and administrative

provisions for the establishment of technical provisions which are adopted pursuant to Article 20 of Directive 2002/83/EC, Article 15 of Directive 73/239/EEC and Article 32 of Directive 2005/68/EC;

- (g) with regard to Articles 308a(7), the length of the transitional period which may be shorter than the maximum of 10 years, the phasing of the transitional period, the specification of the own fund items subject to the transitional, and the transitional requirements as to the classification of own fund items, which will apply to those specified own funds items and requiring that during the transitional period insurance and reinsurance undertakings comply at least with the laws, regulations and administrative provisions adopted pursuant to Article 27 of Directive 2002/83/EC, Article 16 of Directive 73/239/EEC and Article 36 of Directive 2005/68/EC in respect of those own fund items;
- (h) with regard to Articles 308a(8), the length of the transitional period which may be shorter than the maximum of 10 years, any phasing of the transitional period and any transitional requirements as to the calculation and use of a transitional Solvency Capital Requirement. The calculation of the transitional Solvency Capital requirement may include modifications to the stresses, scenarios, correlation coefficients and parameters of the Solvency Capital Requirement standard formula that would otherwise apply. The delegated act shall also require that insurance and reinsurance undertakings comply with a transitional Solvency Capital Requirement that is no higher than the Solvency Capital Requirement and no lower than the sum of the Minimum Capital Requirement and fifty per cent of the difference between the Solvency Capital Requirement and the Minimum Capital Requirement;
- (i) with regard to Article 308a(9), changes which relate to the choice of calculation method and general principles in calculating group solvency set out in Article 220 to 229 and Articles 230 to 233 and Article 235 in relation to the methods for calculating group solvency. The delegated acts may also set out the changes which relate to the calculation of group solvency under supervision at group level as referred to in Article 213(2)(c), where the equivalent supervision is absent as referred to in Article 262. Those changes to the calculation of group own funds and the group solvency capital requirement shall be consequential to any transitional requirements on own funds classification and the Solvency Capital Requirement which apply at the level of individual insurance or reinsurance undertakings during the transitional period as referred to in Article 308a(7) and Article 308a(8) The delegated act shall require that insurance and reinsurance undertakings ensure that eligible own funds, taking account of the transitional provisions in Article 308a(7), are available in the group. Those eligible own funds shall be at least equal to a group Solvency Capital Requirement which shall be calculated by reference to the calculation method of the transitional Solvency Capital Requirement referred to in Article 308a(8) or the amount of the transitional Solvency Capital Requirement;
- (j) with regard to Article 254(2)), changes which relate to the information to be reported to the authorities responsible for exercising group supervision which are consequential to the requirements for supervisory reporting at the level of

individual insurance or reinsurance undertakings which apply during the transitional period referred to in Article 308a(1))

- (k) with regard to Article 256(1) changes which relate to the content and timing of the information which must be publicly disclosed and which are consequential to the requirements for public disclosure at the level of individual insurance or reinsurance undertakings which apply during the transitional period as referred to in Article 308a(4)."

- (72) In Article 309(1), the first subparagraph is replaced by the following:

"Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with Articles 4, 10, 13, 18, 23, 26 to 32, 34 to 49, 51 to 55, 67, 68, 71, 72, 74 to 85, 87 to 91, 93 to 96, 98, 100 to 110, 112, 113, 115 to 126, 128, 129, 131-134, 136-142, 144, 146, 148, 162 to 167, 172, 173, 178, 185, 190, 192, 210 to 233, 235-240, 243 to 258, 260 to 263, 265, 266, 303 and 304 and Annexes III and IV by 31 December 2012.

Member States shall apply those provisions from 1 January 2013."

- (73) In Article 310, the date "1 November 2012" in the first paragraph is replaced by the date "1 January 2013".

- (74) The second paragraph of Article 311 is replaced by the following:

"Articles 1, 2, 3, 5 to 9, 11, 12, 14 to 17, 19-22, 24, 25, 33, 57 to 66, 69, 70, 73, 143, 145, 147, 149 to 161, 168 to 171, 174 to 177, 179 to 184, 186 to 189, 191, 193 to 209, 267 to 300, 302, 305- to 08 and Annexes I and II, V, VI and VII shall apply from 1 January 2013."

- (75) In Annex III, part A, point 28 is replaced by the following:

"28. in any event and as an alternative to the forms of non-life insurance undertaking listed in points (1) to (27) and (29), the form of a European Company (SE) as defined in Council Regulation (EC) No 2157/2001⁽¹⁾"

- (76) In Annex III, part A, the following point 29 is added:

"29. in any event and as an alternative to the forms of non-life insurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Council Regulation (EC) No 1435/2003(*)."

* OJ L 207, 18.8.2003, p. 1.

- (77) In Annex III, part B, point 28 is replaced by the following:

"28. in any event and as an alternative to the forms of life insurance undertaking listed in points (1) to (27) and (29), the form of a European Company (SE) as defined in Regulation (EC) No 2157/2001"

(78) In Annex III, part B, point 29 is added:

"29. in any event and as an alternative to the forms of life insurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Regulation (EC) No 1435/2003."

(79) In Annex III, part C, point 28 is replaced by the following:

"28. in any event and as an alternative to the forms of reinsurance undertaking listed in points (1) to (27) and (29), the form of a European Company (SE) as defined in Regulation (EC) No 2157/2001"

(80) In Annex III, part C, point 29 is added:

"29. in any event and as an alternative to the forms of reinsurance undertaking listed in points (1) to (28), the form of a European Cooperative Society (SCE) as defined in Regulation (EC) No 1435/2003."

(81) The correlation table in Annex VII is amended as follows:

- (a) Under "This Directive", Article 13(27) is inserted as corresponding to Article 5, point (d) of directive 73/239/EEC.
- (b) Under "This Directive", the references to Article 210(1)(f) and Article 210(1)(g) shall be replaced respectively with references to Article 212(1)(f) and Article 212(1)(g).

Article 3 ***Transposition***

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with Article 1(1), Article 2(3), Article 2(6), Article 2(8), Article 2(9), Article 2(12), Article 2(13), Article 2(24), Article 2(25), Article 2(28), Article 2(30), Article 2(32), Article 2(33), , Article 2(39), Article (41) to (42), Article 2(44) to 2(46), Article 2(52) to (54), Article 2(56), Article 2(58), Article 2(61) to (62), Article 2(67), Article 2(69), Article 2(70), and Article 2(71) to 2(80) of this Directive by 31 December 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 January 2013.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their

official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. Articles 2(15) and 2(20) shall apply from 1 January 2013.

Article 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President
[...]

For the Council
The President
[...]