



Markt/2513/05

NOTE TO THE MEMBERS OF THE EIOPC

Subject: Legislative Approach for Solvency II and possible impact on the timing

Purpose of this note:

The purpose of this note is to suggest a new legislative approach for the Solvency II project after a first comparison of the Recast Life Assurance Directive 2002/83/EC and the Draft Recast of the Non-life Directives.

Effects on the Solvency II roadmap will also be discussed.

Questions to the Members of the EIOPC:

- *Do you have comments on the proposed legislative approach?*
- *Do you have comments regarding the amended timeframe?*

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1. BACKGROUND

During the meeting of the Solvency Working Group on 17 May 2005 the Commission Services presented considerations concerning the outline for a Framework Directive on Solvency II [MARKT/2507/05 (revised)].

In the working paper the Commission presented three legislative approaches. The approach favoured by the Commission Services was to draft and present simultaneously three different framework directives on Solvency II, i.e. one Directive amending and recasting (where necessary) the Life Assurance Directive, one Directive amending and recasting the Non-Life Directives and a third Directive amending other relevant Directives (e.g. the Insurance Groups Directive).

In addition to the three legislative approaches presented by the Commission, the UK delegation proposed a fourth legislative approach. It suggested that the Commission should start from a blank sheet of paper with the aim of codifying and revising the existing Directives (life, non-life, reinsurance, group etc) in one single Directive. The proposal was, with some modifications, supported by nine other delegations.

The Commission Services agreed to reconsider their approach and to evaluate the feasibility of the approach suggested by the UK. In order to assess the UK approach the Commission Services started off with a comparison of the recast Life Directive and the draft recast Non-life Directive by comparing them word by word.

2. LEGISLATIVE APPROACH:

Based on a comparison of the various legal texts, the Commission Services propose the following legislative approach:

2.1. Codification

The codification will be the basis for all future work. Hence, this work needs to be done very thoroughly.

A codification exercise needs to be based on an exact comparison (sentence by sentence, word by word) of the Directives which are to be codified. A first comparison shows that there are 15 Articles in Non-life without equivalents in Life and 9 Articles in Life without equivalents in Non-life. Out of the remaining 66 Articles, 22 Articles are similar but contain logical differences due to the different character of life and non-life insurance (33%). 11 Articles are almost identical; the differences are non-substantial and an alignment may be desirable (16%). 19 Articles are identical (29%). 8 Articles and the Annexes are completely different.

During the codification exercise, at least the following issues need to be addressed: all references and cross-references have to be revised and recitals need to be aligned. It needs to be examined where an alignment of wording between Life and Non-life is necessary (or desirable) and possible as part of the codification. Some Articles seem obsolete and it must be decided whether they can be abolished. Amendments following from recently adopted Directives such as the Lamfalussy Directive, the Financial Conglomerates Directive and the Reinsurance Directive must be taken into account.

During the preparation of the Reinsurance Directive, the Legal Service requested shorter and more readable articles. This resulted in the split of several Articles, the introduction of sections and new headings. However, the structure of the Non-life Directives was maintained. It can be expected that a similar shortening exercise will need to be undertaken in the context of the current project.

As a second step of the codification exercise, the Reinsurance Directive and the Insurance Groups Directive need to be incorporated.

In this context it is important to highlight that codifying the existing acquis bears the risk of renegotiating parts of the existing acquis which does not need to be changed in light of Solvency II. It needs to be stressed that a codification exercise is only feasible once Member States agree that this exercise will not be used as a mean for re-negotiating the existing acquis.

As far as the future structure of the single Directive is concerned a restructuring exercise going beyond a codification of the existing acquis is not desirable and should not be introduced in the Solvency II project. Any attempt to do so would result in the risk of losing the overview of the numerous Directives and Articles involved in this exercise and consequently, the risk of omitting unintentionally existing Articles. It needs to be recalled that the structure of the current Directives was not taken “out of the blue”, but was the result of thorough discussions between the Commission and the Member States. Before any structural changes are made, the added value of such restructuring should be assessed and proven. Until such analysis is made, we consider at first sight that a restructuring exercise going beyond a codification of the existing acquis is not desirable and should not be introduced as part of the Solvency II project.

2.2. Inclusion of Solvency II related changes

In the second phase of the process, the Solvency II related changes would be included in the codified Single Directive. This would include a decision on the split between level 1 and level 2. However, the current provisions of the already existing Directives will be fully integrated in the Single Directive. Only those Articles introduced as part of Solvency II would be split into level 1 and 2, where necessary.

3. TIME-FRAME:

The current roadmap foresees a final draft of the framework Directive for April 2006 and the adoption by the Commission for October 2006. Considering the additional preparatory work needed for the codification, the Commission Services assume that the current roadmap is not longer feasible with regard to the adoption of the framework Directive.

The Commission Services reckon that it would be possible to present a first draft of a codified Single Directive at the EIOPC meeting on 30 November 2005. After discussions with Member States this draft will need to be finalized before it can be taken as a basis for the Solvency II project. After the codification has been agreed, the Commission Services will introduce the Solvency II related changes. It is important to highlight that codifying the existing acquis bears the risk of time-consuming renegotiations of Articles which do not need to be changed in light of Solvency II. Hence, Member States would need to commit themselves to negotiate only Solvency II related changes. Provided that

the codification will be finalized by autumn of 2006, the adoption of the Solvency II framework Directive could possibly take place by mid 2007.

It must be emphasised that all questions regarding the codification process must be clarified before the Solvency II related changes will be introduced. This would mean that the Solvency II related legal work cannot be initiated until a final draft of the codified Single Directive has been agreed.

The postponement of the adoption of the Framework Directive should allow us to better prepare the Solvency II project. It will give us more time to prepare the impact assessment and the QIS and to continue the technical work. This will also make it easier to assess the practical consequences of the project.

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