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Mr Gabriel BERNARDINO  
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60327 Frankfurt  
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Dear Mr Bernardino,

*Dear Gabriel,*

I write further to my letter of 22 November 2011, in which I requested EIOPA's technical input in relation to the transitional regime that is envisaged for the equivalence of third countries under Solvency II.

The Commission's proposal for the Omnibus II Directive introduces the possibility for third countries, which meet defined criteria, to be included in a transitional regime for Solvency II equivalence. Omnibus II is currently subject to ongoing negotiations in the Council of Ministers and the European Parliament and the details of the transitional regime relating to the criteria for eligibility and the length of the transitional period are yet to be agreed. This letter does not prejudice the outcome of those discussions. However, the Commission understands that the co-legislators are supportive of a transitional regime for third country equivalence.

It is on that basis that I asked in my previous letter for EIOPA to carry out an analysis of the following:

- 1) whether persons working for, or on behalf of, the supervisory authorities are bound by obligations of professional secrecy which are equivalent to those established under Solvency II; and
- 2) the areas where the third country's supervisory regime does not currently meet the equivalence criteria ("gap analysis").

The purpose of this technical analysis is to help the Commission and third country supervisory authorities to prepare for the future discussions that are envisaged in relation to both full and transitional equivalence determinations under Articles 172, 227 and 260 of Directive 2009/138/EC ("the Solvency II Framework Directive"). As such, we would expect EIOPA to adopt a different approach to its work than that adopted for the full equivalence assessments.

As part of the regular exchange with supervisory authorities of third countries, the Commission has informally discussed with a number of third countries a potential

transitional regime for third country equivalence under Solvency II. The purpose of these exchanges has been to discuss whether inclusion in the transitional regime would be mutually beneficial to the third country and the European Union in terms of facilitating the cross border activities of insurance and reinsurance undertakings and easing the burden on internationally active groups.

The outcome of these discussions is that the following third countries have expressed an interest in being part of a transitional regime:

Australia  
Chile  
Hong Kong  
Israel  
Mexico  
Singapore  
South Africa

I would like to take this opportunity to stress that the inclusion of a third country in the above list does not create any obligation on the part of either the third country or the European Commission in relation to the subsequent inclusion of that third country in the transitional regime. Discussions with these third countries are ongoing and EIOPA is not asked in carrying out the above technical analysis to come to a conclusion about the eligibility of a third country for the transitional regime. Decisions on the inclusion of third countries in a transitional regime will not be taken by the European Commission until next year.

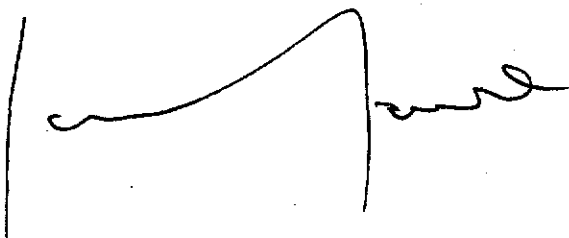
In addition to the third countries listed above the Commission has had initial discussions with Brazil, China and Turkey on the issue of a transitional regime for third country equivalence. Discussions with these third countries are still at an early stage, but the Commission understands that they are also in principal interested in inclusion in a transitional regime.

In relation to the United States, representatives from the Commission and yourself met with the representatives from the Federal Insurance Office and the State insurance regulators recently to define a workplan, which would lead to increased mutual understanding and co-operation in the insurance sector for the benefit of consumer protection, business opportunity and effective supervision. I fully share with you the importance of this work, the output of which could serve as a basis for future discussions on equivalence. The prudential regulation of insurance undertakings remains a State competence under US law. Therefore, as recognised in CEIOPS previous technical advice, it is clear that a different approach for equivalence in relation to the US would need to be adopted.

EIOPA recently provided its technical assessment of the equivalence of the solvency regime applied to the Japanese reinsurance sector (Article 172 equivalence), which incorporated an assessment of the equivalence of the professional secrecy provisions in Japan. During this process, I understand that the Japanese Financial Services Agency (JFSA) indicated its interest in being included in a transitional regime for third country equivalence in relation to group solvency (Article 227 equivalence) and group supervision (Article 260 equivalence). Therefore, I would like to propose that EIOPA initiates further discussions with the JFSA on point 2) above ("gap analysis") in relation to the JFSA's regime for group solvency and group supervision.

Finally, I would like to take this opportunity to thank you for the collaborative approach you and your staff have taken so far on the issue of equivalence and I look forward to our ongoing cooperation as the equivalence discussions move into the next phase.

Yours sincerely,

*Kind regards,* | 

Jonathan Faull

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