EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2014)

Opinion

Title **DG MARKT – Impact Assessment on the Solvency II Delegated Acts**

(draft version of 12 March 2014)*

(A) Context

The Solvency II Directive (2009/138/EC) provided a framework for the regulation and supervision of insurance and reinsurance undertakings in the EU, replaced 14 existing insurance directives and introduced economic risk-based solvency requirements across all EU Member States. Before its entry into force, the economic and financial crisis revealed that further amendments would be necessary to introduce transitional and countercyclical measures to preserve the financial stability of the entire insurance sector. These changes have been introduced by the so called Omnibus II Directive, whose adoption by the Legislator is imminent. In between, the application date for Solvency II had to be postponed twice and was finally set to January 2016. While much of the topics originally designated for the delegated acts were included in the Omnibus II Directive, this impact assessment discusses how to implement some of the remaining measures, notably as regards capital requirements and other measures relating to long term investments, the composition of insurers' own funds requirements, requirements for valuation of assets and liabilities, and reporting and disclosure.

(B) Overall opinion: NEGATIVE

The report should make clear on what basis the selection of delegated acts to be impact assessed was made and why those listed in Annex II were not further assessed. The report should justify the need to regulate the remuneration policy, especially as the basic act does not ask for it. The report should better explain where the options deviate from the EIOPA advice and why. Finally, the impact section should be significantly strengthened, making greater use of existing analytical work and stakeholder views. In this context, the report should critically assess what can be realistically achieved by this initiative as regards incentivising long-term investments (including securitisations) and discuss possible risks in relation to the prudential soundness of the insurance sector.

Given the nature of these recommendations, the Board asks DG MARKT to submit a revised version of the report, on which it will issue a new opinion.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Clarify the scope of the initiative. The report should clarify the criteria for selecting the delegated acts that would be impact assessed (out of the 76 existing empowerments). In doing so, it should better explain why the remaining ones, listed in Annex II, are not further assessed (e.g. key parameters already being fixed in the basic act or no significant impacts being expected). Against a more comprehensive description of changes introduced by the Omnibus II Directive, the report should better explain the scope and relative importance of choices that still need to be made – namely as regards fostering the role of insurers as long-term investors in the context of the existing prudential regime (as stipulated in the basic act).

(2) Clarify the problem definition. The problem definition should be further strengthened by better explaining how stakeholders are affected by the specific problems and by providing additional evidence, where available. In particular, the report should better demonstrate the need for incentivising insurers to invest in certain types of assets (such as securitisations). It should also strengthen the problem definition by indicating on basis of what evidence it has been concluded that: (i) the existing minimum limits on eligible own funds are insufficient; (ii) remuneration policy in the insurance sector needs to be regulated and disclosed (despite that the basic act remains silent on this issue and despite the differences as compared to the banking sector); and (iii) national supervisors need a certain amount of information more frequently than on a yearly basis (despite the currently limited experience at national level).

(3) Better present the options. Relying on a strengthened problem definition, the report should provide more insights into the rationale of the options' design, as well as their implementation, monitoring and review. Notably, it should better explain where the options deviate from the EIOPA advice and/or the preferences of other stakeholder groups, and why. The report should clarify to what extent the options on long-term investments avoid over-reliance on credit ratings. Concerning the risk dampener, the report should explain why the option of 24 months has not been considered and clarify the assumptions made as regards its stabilizing effect. It should also clarify whether other financial institutions such as the ECB would have a role to play and how it will be ensured that EIOPA limits the envisaged quarterly reporting requirements to the necessary minimum.

(4) Further develop the assessment of impacts. The impact section should be significantly strengthened by providing a more comprehensive and critical assessment of what can be realistically achieved by this initiative, including the likely impact on the real economy. It should clarify which insurers will be affected and to what extent they can be expected to change their investment behaviour. Corresponding impacts on their risk exposure, product offer and prices should be assessed. In developing the assessment of impacts, the report should make greater use of available evidence (namely the referenced studies where still relevant and up-to-date) and stakeholder views. This should allow to better substantiate the impacts on the prudential regime and the overall stability of the financial sector. The report should also indicate to what extent market discipline and supervisory work can be realistically expected to improve with the disclosure of remuneration policies and higher reporting frequency. The estimated costs (arising essentially from the requirements on reporting/disclosure and the quality of own funds) should be better presented, while clarifying the scope for reducing disproportionate burdens on smaller insurers or mutuals (taking account of their size, nature and complexity of the risk in their business).

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should be shortened by moving the background information to annexes, by limiting the repetitions (e.g. in the section on objectives) and by focussing more narrowly on the policy choices that were left open by the Omnibus II Directive. Annexes should also include a summary of public and targeted consultation responses of key stakeholders groups per issue, as well as available summaries of the underlying studies, including EIOPA reports and recommendations. The report should be carefully proofread and should include page numbers as well as numbered captions of graphs and tables to facilitate references.

(E) IAB scrutiny process	
Reference number	2010/MARKT/028
External expertise used	No
Date of IAB meeting	9 April 2014